

1 RAHILA KHAN
 2 40224 Blanchard Street
 3 Fremont, CA 94538
 4 Tel: (510) 999-7991
 5 Fax: (510) 999-7991

6 Plaintiffs In Pro Per

FILED A

MAR - 6 2012

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

Fee
 Paid
 ISS.
 2

ADR

7
 8 UNITED STATES DISTRICT COURT
 9
 10 NORTHERN DISTRICT OF CALIFORNIA

11 UNLIMITED CIVIL CASE

12 RAHILA KHAN,

) Case No: 012-01107 LB

13 Plaintiff,

) PLAINTIFFS COMPLAINT FOR

14 vs.

) (1) FRAUD;
) (2) VIOLATIONS OF TRUTH IN
) LENDING ACT;
) (3) VIOLATIONS IN REAL ESTATE
) SETTLEMENT PROCEDURES ACT;
) (4) VIOLATIONS OF CALIFORNIA
) CIVIL CODE SECTIONS 2923.5 and
) 2924

15 Defendants.

)
 16 Date: _____
 17 Time: _____
 18 Place: _____
 19 Trial Date: _____

20 Plaintiff Rahila Khan (hereinafter referred to as "Plaintiff") alleges as follows:

21 1. At all times material to this Complaint, plaintiff was and is a resident of the City
 22 of Fremont in Alameda County, California. At all times material to this Complaint, the plaintiff
 23 was the owner of the "Subject Property" as set described and incorporated by reference. To
 24 finance the purchase of the Subject Property, the plaintiff obtained two loans -- the 1st Loan
 25 consisting of the 1st promissory note and 1st deed of trust, described and incorporated by

PLAINTIFFS COMPLAINT FOR (1) FRAUD; (2) VIOLATIONS OF TRUTH IN
 LENDING ACT; (3) VIOLATIONS IN REAL ESTATE SETTLEMENT PROCEDURES ACT; (4) VIOLATIONS
 OF CALIFORNIA CIVIL CODE SECTIONS 2923.5 and 2924

1 reference, and the 2nd Loan consisting of the 2nd promissory note and the 2nd deed of trust,
 2 described and incorporated by reference,

3 2. Defendant Bank of America Corporation (hereinafter "Bank of America Corp.")
 4 is a foreign corporation bank incorporated in Delaware with its principal place of business in
 5 Charlotte, North Carolina. At all times material to this Complaint, Bank of America Corp. was
 6 doing business in the State of California. Bank of America Corp. is the parent corporation of
 7 Bank of America, N.A. and is a successor in interest by merger to Countrywide Financial. At all
 8 times material to this Complaint, defendant Bank of America Corp. was and is doing business in
 9 the State of California as the following named corporations and entities: Bank of America, N.A.,
 10 BAC Homes Loans Servicing L.P., Countrywide Financial Corporation, Countrywide Homes
 11 Loans, Inc. and Countrywide Homes Loans Servicing, LP and ReconTrust Company, NA.

12 3. Bank of America Corp. which was doing business as said corporations and
 13 entities in California identified and incorporated by reference, has assumed the liabilities of these
 14 corporations and entities, according to the rule of successor liability in that when Bank of
 15 America Corp. acquired by transactions involving purchase, transfer or otherwise the assets of
 16 said corporations and entities, there was an express or implied agreement of assumption of their
 17 liabilities by Bank of America Corp. and said transactions amounted to a consolidation or merger
 18 of Bank of America Corp. and said corporations and entities. Therefore, Bank of America Corp.
 19 and said corporations and entities are one and the same, based upon the following facts:

20 A. Bank of America, N.A. is a national bank with its principal place of business
 21 located in Charlotte, North Carolina. At all times material to this Complaint, Bank of America,
 22 N.A. was doing business in the State of California. Bank of America, N.A. is the parent
 23 corporation by merger of BAC Homes Loans Servicing, LP.

24 B. BAC Homes Loans Servicing, LP (hereinafter "BAC") is a subsidiary of Bank of
 25 America, N.A. with its principal place of business in Texas. On July 1, 2011, BAC was merged

1 into Bank of America, NA. At all times material to this Complaint, BAC was doing business in
 2 the State of California. As all times material to this Complaint, since approximately September
 3 2009 as set forth and incorporated by reference, BAC became the servicer of the plaintiffs two
 4 Loans regarding the Subject Property and serviced and is now servicing said Loans.

5 C. Countrywide Financial Corporation (hereinafter "Countrywide") is a Delaware
 6 corporation and a thrift holding company which did business in California. Countrywide Home
 7 Loans, Inc. was a New York Corporation licensed to do business in California and was a wholly
 8 owned subsidiary of Countrywide Financial, which was a licensed mortgage banking
 9 organization. At all times material to this Complaint, Countrywide Home Loans Servicing, LP is
 10 or was a Texas limited partnership directly owned by Countrywide GP, Inc. and Countrywide
 11 LP, Inc., each a Nevada corporation, and was a direct wholly owned subsidiary of Countrywide
 12 Home Loans, Inc. Countrywide Servicing serviced loans originated by Countrywide.
 13 Countrywide serviced the plaintiffs two Loans which financed the purchase of the Subject
 14 Property, as set forth and incorporated by reference.

15 D. On July 1, 2008, Bank of America Corp. completed its purchase of Countrywide
 16 in an all-stock transaction that Bank of America Corp. has described as a merger. Since
 17 Countrywide's acquisition, Bank of America Corp. has taken over servicing loans previously
 18 serviced by Countrywide along with its own servicing portfolio. The combined mortgage lending
 19 operation Bank of America Corp. and Countrywide now operate under the name Bank of
 20 America Home Loans. The servicing operations of Bank of America Home Loans and
 21 Countrywide were merged into BAC. As part of the merger, Bank of America Corp. assumed
 22 Countrywide's liabilities. Countrywide has been completely integrated into Bank of America
 23 and has virtually ceased to exist. In November 2008, Countrywide's assets were transferred to
 24 Bank of America Corp. Countrywide has stopped independently filing financial statements.
 25 Instead, Countrywide's assets and liabilities are reported on Bank of America Corp.'s financial

1 statements. On April 27, 2009, Bank of America Corp. announced in its press release of that
 2 date, that the Countrywide brand has been retired.

3 E. At all times material to this Complaint, after approximately November 2006, as
 4 set forth and incorporated by reference, Countrywide Home Loans, Inc. acted as the servicer
 5 (hereinafter "Servicer") of the 1st Loan and 2nd Loan regarding the Subject Property pursuant to
 6 the Pooling and Servicing Agreement dated March 1, 2007 (hereinafter the "PSA") filed with the
 7 Securities and Exchange Commission (hereinafter "SEC") as set forth and incorporated by
 8 reference. Said PSA formed the Morgan Stanley Trust Home Equity Loan Trust 2007-2,
 9 Mortgage Pass Through Certificates, Series 2007-2. The plaintiff is informed and believes that
 10 sometime after Bank of America Corp. acquired Countrywide, BAC a subsidiary of Bank of
 11 America Corp. took over the role of Servicer of the plaintiff's 1st Loan and 2nd Loan pursuant to
 12 the terms of said PSA, which allows for the appointment of successor Servicers and sub-
 13 Servicers. Therefore, at all times material to this Complaint, after approximately September
 14 2009, as set forth and incorporated by reference, Bank of America Corp. and BAC were and are
 15 the Servicer(s) of said 1st Loan and 2nd Loan. Therefore, Bank of America Corp. and BAC are
 16 one and the same and Bank of America Corp. is liable for any and all of BAC's, LP's conduct
 17 alleged herein. In addition, thus, Bank of America and Countrywide are one and the same and
 18 Bank of America Corp. is liable for any and all of Countrywide's conduct alleged herein.

19 4. Defendant ReconTrust Company, N.A. (hereinafter "ReconTrust") is a wholly-
 20 owned subsidiary of Bank of America N.A. ReconTrust is a for-profit business entity permitted
 21 by the U.S. Office of the Comptroller of the Currency to exist as a non-depository uninsured,
 22 limited-purpose national trust bank. ReconTrust and BAC Loan Servicing, L.P., are part of the
 23 same company, in that they are both subsidiaries of Bank of America Corp. At all times material
 24 to this Complaint, ReconTrust was doing business in the State of California. ReconTrust is in the
 25 business of foreclosing loans serviced by Bank of America, N.A. and its wholly owned

1 subsidiary, BAC. Recontrust, on its website at <http://www.recontrustc0.com/index.aspx> states as
 2 of the date of the filing of this complaint that it is doing business as follows: "ReconTrust's
 3 default management services could take the weight off your operations, so you can focus on your
 4 core business. We provide foreclosure services in 16 states." ReconTrust's website does not state
 5 it does any other type of business. At all times material to this Complaint, ReconTrust acted as a
 6 Servicer of the plaintiff's 1st Loan and 2nd Loan regarding the Subject Property and/or as a trustee
 7 or defacto trustee pursuant to California Civil Code §2934a. Furthermore, apparently sometime
 8 after the Assignment of Deed of Trust on June 28, 2011, as set forth and incorporated by
 9 reference, ReconTrust took over a role of Servicer of the plaintiffs 1st Loan and 2nd Loan from
 10 BAC, pursuant to the terms of said PSA which allows for the appointment of successor Servicers
 11 and sub-Servicers.

12 5. Plaintiffs are ignorant of the true names and capacity of the Defendants sued
 herein as DOES 1 through 10 and, therefore sues these Defendants by such fictitious names.
 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.

13 6. Defendants sued herein as DOES 1 through 10 are contractually, strictly,
 negligently, intentionally, vicariously liable and or otherwise legally responsible in some manner
 14 for each and every act, omission, obligation, event or happening set forth in this Complaint, and
 that each of said fictitiously named Defendants is indebted to Plaintiff as hereinafter alleged.

15 7. The use of the term "Defendants" in any of the allegations in this Complaint,
 unless specifically otherwise set forth, is intended to include and charge both jointly and
 severely, not only named Defendants, but all Defendants designated as well.

16 8. Plaintiff is informed and believe and thereon alleges that, at all times mentioned
 herein, Defendants were agents, servants, employees, alter egos, superiors, successors in interest,
 joint venturers and/ or co-conspirators of each of their co-defendants and in doing the things
 17 herein after mentioned, or acting within the course and scope of their authority of such agents,

1 servants, employees, alter egos, superiors, successors in interest, joint venturers and/ or co-
2 conspirators with the permission and consent of their co-defendants and, consequently, each
3 Defendant named herein, and those Defendants named herein as DOES 1 through 10, inclusive,
4 are jointly and severely liable to Plaintiff for the damages and harm sustained as a result of their
5 wrongful conduct.

6 9. Defendants, and each of them, aided and abetted, encouraged, and rendered
7 substantial assistance to the other Defendants in breaching their obligations to Plaintiff, as
8 alleged herein. In taking action, as alleged herein, to aid and abet and substantially assist the
9 commissions of these wrongful acts and other wrongdoings complained of, each of the
10 Defendants acted with an awareness of its primary wrongdoing and realized that its conduct
11 would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and
12 wrongdoing.

13 10. Defendants, and each of them, knowingly and willfully conspired, engaged in a
14 common enterprise, and engaged in a common course of conduct to accomplish the wrongs
15 complained of herein. The purpose and effect of the conspiracy, common enterprise, and
16 common course of conduct complained of was, inter alia, to financially benefit Defendants at the
17 expense of Plaintiffs by engaging in fraudulent activities. Defendants accomplished their
18 conspiracy, common enterprise, and common course of conduct by misrepresenting and
19 concealing material information regarding the servicing of loans, and by taking steps and making
20 statements in furtherance of their wrongdoing as specified herein. Each Defendant was a direct,
21 necessary and substantial participant in the conspiracy, common enterprise and common course
22 of conduct complained of herein, and was aware of its overall contribution to and furtherance
23 thereof. Defendants' wrongful acts include, inter alia, all of the acts that each of them are
24 alleged to have committed in furtherance of the wrongful conduct of complained of herein.
25

11. Any applicable statutes of limitations have been tolled by the Defendants' continuing, knowing, and active concealment of the facts alleged herein. Despite exercising reasonable diligence, Plaintiff could not have discovered, did not discover, and was prevented from discovering, the wrongdoing complained of herein.

12. In the alternative, Defendants should be estopped from relying on any statutes of limitations. Defendants have been under a continuing duty to disclose the true character, nature, and quality of their financial services and debt collection practices. Defendants owed Plaintiffs an affirmative duty of full and fair disclosure, but knowingly failed to honor and discharge such duty.

INTRODUCTION

13. This action arises out of the worst economic crisis since the Great Depression. The implosion of the real estate market is at the center of the crisis. It has created a frenzy among banks such as Bank of America, one of the largest corporation in terms of assets in the world, to foreclose on as many properties as possible. It has recently come to light that, in their quest to foreclose on properties as quickly as possible, Bank of America and other lenders have been acting outside of the law in its foreclosure practice.

14. Ever since, the national press has been reporting stories of numerous illegalities in the policies, practices and procedures of lenders, and their employees and agents employed and retained to process foreclosures. The evidence is overwhelming that Bank of America and other lenders have been acting outside of the law since this crisis began. This action is a prime example of Bank of America and its agents' wrongful and illegal conduct in their greed for property and fees at any cost without any regard to the rights of homeowners and borrowers.

STATEMENT OF FACTS

1 **15. THE PLAINTIFF EMPLOYED GOLDEN STATE AND DOES 1**

2 **THROUGH 10 TO PROCURE A LOAN FOR HER TO PURCHASE THE "SUBJECT**
 3 **PROPERTY".**

4 On or about September 2006, Plaintiff engaged the services of Golden State and the
 5 entities to which it "converted out" (hereinafter "DOES 6 through 10") by engaging the services
 6 of a male mortgage broker Thomas, whose last name the plaintiff cannot now recall (hereinafter
 7 DOE 1) and a female employee of Golden State named Mary, whose last name the plaintiff
 8 cannot now recall (hereinafter DOE 2) and a male supervisor whose name the plaintiff cannot
 9 now recall (hereinafter DOE 3) and possibly engaged the services of other persons employed by
 10 Golden State and Does 6 through 10, whose identities the plaintiff does not recall or know at this
 11 time, (hereinafter DOES 4 through 5). Mary, DOE 2, acted at all times material to this
 12 Complaint, in the role of an assistant to DOE 1 AND DOE 3. DOES 1 through 5 held themselves
 13 out to be agents and employees of Golden State and plaintiff is informed and believes and
 14 thereon alleges that they worked for Golden State. Plaintiff employed the services of said
 15 defendants Golden State DOES 1 through 10 to procure a loan for her to purchase the Subject
 16 Property. The plaintiff's primary language is Urdu. The plaintiff at the time she procured said 1st
 17 Loan and 2nd Loan had limited English language ability regarding reading, and could not read
 18 and understand the terms used in reference to loans and financing. The plaintiff could not read
 19 the and understand the terms in English regarding said 1st Loan and 2nd Loan as set forth in the
 20 stack of loan documents which Does 1 through 3 told her to sign in order to procure said loans.
 21 The plaintiff told Does 1 through 3 that her primary language was Urdu and that she could not
 22 read said loan documents, but they failed to provide for her any translation whatsoever. Instead,
 23 Doe 3 made representations about the 1st Loan and 2nd Loan to the plaintiff as set forth and
 24
 25

1 incorporated by reference and told her that said loan documents stated what he represented to her
 2 as set forth in said paragraphs. The plaintiff believed Doe 3 and relied upon him completely.
 3

4 A. On the day the plaintiff signed the loan documents at Golden State's office in
 5 Fremont, California, the plaintiff could not read the loan documents which contained
 6 sophisticated and complex loan and finance terms because of her limited English
 7 language reading ability and needed to have all of the loan documents translated into
 8 Urdu for her so she could understand them. However, DOE 3, speaking English,
 9 represented to the plaintiff what was in the loan documents and she believed what he said
 to her because of his apparent professional expertise.

7 B. On the day the plaintiff signed the loan documents at Golden State's office in
 8 Fremont, DOES 1 through 3 did not translate into Urdu any of what Doe 3 represented to
 9 the plaintiff in his oral statements regarding the two loans, nor did they translate into
 Urdu any of the documents regarding the 1st Loan and 2nd Loan which she signed.

10 **16. VICARIOUS LIABILITY - DOES 1 THROUGH 5 WERE AGENTS AND
 11 EMPLOYEES OF GOLDEN STATE**

12 At various times, DOE 1 and DOE 3 represented to the plaintiff that each one of them,
 13 individually, was a mortgage broker who worked on behalf of Golden State and as its employee
 14 and that everything each one of them did for her regarding obtaining the loan and everything
 15 each one of them said to her regarding the loan, was on behalf of Golden State and DOES 6
 16 through 10. DOE 1 and DOE 3 told the plaintiff that Golden State employed each of them as a
 17 mortgage broker to work on behalf of Accredited to provide a loan to the plaintiff regarding the
 18 Subject Property. The plaintiff alleges that defendants Golden State and Does 6 through 10, are
 19 responsible for the conduct of DOES 1 through 5 because said DOES 1 through 5 were the
 20 apparent employees and agents of said defendants in that Golden State and Does 6 through 10
 21 intentionally and/or carelessly created the impression that DOES 1 through 5 were their agents
 22 and employees. Furthermore, the plaintiff reasonably believed that DOES 1 through 5 were the
 23 agents and employees of Golden State and DOES 6 through 10. The plaintiff was harmed as set
 24 forth in this Complaint incorporated by reference because she reasonably relied on said belief. At
 25

1 all times material to this Complaint, the plaintiff alleges that DOES 1 through 5 acted within the
 2 course and scope of their employment with Golden State and DOES 6 through 10.

17. VICARIOUS LIABILITY - GOLDEN STATE AND DOES 1 THROUGH 10

WERE AGENTS OF ACCREDITED

5 On the day that the plaintiff signed the loan documents at Golden State's office in
 6 Fremont, CA, DOE 1 and DOE 3 represented to the plaintiff the each of them and
 7 Golden State were mortgage brokers who also worked on behalf of Accredited, and that
 8 everything each of them did for her regarding obtaining the loan and everything he said to her
 9 regarding the loan, was also on behalf of Accredited. DOE 1 and DOE 3 each said to the
 10 plaintiff, words to the effect: "I speak for Accredited." Furthermore, DOE 1 and DOE 3 each
 11 said that Accredited employed each of them and Golden State as mortgage brokers to work on
 12 behalf of Accredited to provide a loan to the plaintiff regarding the Subject Property. The
 13 plaintiff alleges that defendant Accredited is responsible for the conduct of defendants Golden
 14 State and DOES 1 through 10 because said defendants were the apparent employees and agents
 15 of said defendant Accredited in that they intentionally and/or carelessly created the impression
 16 that they were Accredited agents and employees. Furthermore, the plaintiff reasonably and
 17 justifiably believed that Golden State and Does 1 through 10 were the agents and employees of
 18 Accredited. The plaintiff was harmed as set forth in this Complaint because she reasonably relied
 19 on her belief. At all times material to this Complaint, the plaintiff alleges that that Golden State
 20 and Does 1 through 10 acted within the course and scope of their agency and employment with
 21 Accredited. Furthermore, the plaintiff alleges that defendants Golden State and Does 1 through
 22 10 were the agents and employees of Accredited, therefore Accredited is responsible for their
 23 conduct. Said defendants were Accredited's agents and employees, because Accredited gave
 24 them the authority to act on its behalf. The plaintiff is informed and believes and thereon alleges
 25 that said authority was given by words of Accredited's managing agents who underwrote the

1 loan and who required proof of income from the plaintiff thus employing the agents DOES 1
 2 through 5 to that end, Said authority was also implied by the parties' conduct, as set forth below:

3 A. Accredited provided out of the loan proceeds to defendants Golden State and Does 1
 4 through 10, a Loan Origination Fee of \$4,000.00, and a Processing fee of \$995.00 and the
 5 "Yield Spread" to Golden State was "\$5,175.00 POC". Said Yield Point Spread was
 6 provided to said defendants in exchange for their convincing the plaintiff to obtain a the
 7 1st and 2nd loans which had higher interest rates and prepayment penalties, than normal
 8 loans. Thereby, Accredited provided Golden State and Does 1 through 10 with an
 monetary incentive to act in ways that furthered the lender's interests and profits at the
 expense of the plaintiff. Thereby, Accredited's conduct showed it authorized Golden
 State and Does 1 through 10 to act as its agents at all times material to this Complaint.

9 B. Accredited was in the business of underwriting the 1st Loan which was a predatory
 10 loan as set forth in paragraph 32 incorporated by reference, because it was a negative
 11 amortization loan, The 1st Loan and 2nd Loan were unconscionable loans in that they
 12 were made based on the foreclosure value of the collateral, rather than on a determination
 that the borrower had the capacity to make the scheduled payments under the terms of the
 loan, based on the borrower's current and expected income, current obligations,
 employment status, and other relevant financial resources.

13 C. Accredited knew that it gave instructions to the title company Alliance's closing agent
 14 in its "Addendum to Lender's Instructions" that the title company was to obtain various
 15 proofs of the plaintiffs' capacity to make scheduled payments under the terms of the loan,
 when in fact, such proof was inadequate proof, as set forth in paragraph 33. B. Thus,
 Accredited knew, based upon its knowledge of what documents the title company
 16 procured from the plaintiff pursuant to the Addendum, as set forth in paragraph 33 A
 incorporated by reference, that the plaintiff did not provide all the proof required in said
 Addendum at the time she signed the loan papers. Therefore, Accredited knew that
 17 defendants Golden State and Does 1 through 10 also did not obtain said documentation.
 Therefore Accredited gave said defendants the authority to have the plaintiff sign the loan
 18 documents without providing sufficient proof of her income. Accredited and Golden
 19 State and Does 1 through 10 worked together to have the plaintiff obtain a predatory and
 20 unconscionable 1st Loan and 2nd Loan. Thereby, Accredited's conduct showed it
 21 authorized Golden State and Does 1 through 10 to act as its agents at all times material to
 this Complaint.

22 D. As set forth in sections A through C above, Accredited had the right to control and
 23 supervise and did supervise and control the means by which the 1st Loan and 2nd Loan
 24 were obtained by the plaintiff, because Accredited used the title company and its agents
 25 Golden State and DOES 1 through 10 to obtain proof of income and then, in fact,
 provided the loan without said proof. This established the agency relationship between
 Accredited and Golden State and Does 1 through 10. As set forth in A through C above,
 Accredited gave Golden state and Does 1 through 10, the authority to represent and bind

1 the lender on its behalf regarding the plaintiffs proof of income required to obtain the
 2 loan, because Accredited knew that said proof of income was insufficient. Thus
 3 Accredited acted in such a way that it would give at third party the impression that said
 4 agency relationship existed.

5 **18. VICARIOUS LIABILITY - ACCREDITED AIDED AND ABETTED**
 6 **GOLDEN STATE AND DOES 1 THROUGH 10 IN HARMING THE PLAINTIFF.**

7 The plaintiff alleges that she was harmed as set forth in this Complaint by Golden State
 8 and Does 1 through 10 and that Accredited is responsible for said harm because Accredited,
 9 through its managing agents, aided and abetted Golden State and Does 1 through 10 as set forth
 10 hereinabove, incorporated by reference which alleges facts that Accredited knew that Golden
 11 State and Does 1 through 10 were going to commit and had committed the harm of having the
 12 plaintiff contract for a predatory loan, in that she had insufficient proof of income. As set forth
 13 herein, Accredited gave substantial assistance and encouragement to Golden State and Does 1
 14 through 10 in committing said harm, and Accredited's conduct was a substantial factor in
 15 causing harm to the plaintiff.

16 **19. VICARIOUS LIABILITY — ACCREDITED ENGAGED IN A**
 17 **CONSPIRACY WITH GOLDEN STATE AND DOES 1 THROUGH 10 IN ORDER TO**
 18 **HARM THE PLAINTIFF.**

19 The plaintiff alleges that she was harmed by Golden State and Doe 1 through 10 as set
 20 forth in this Complaint and that Accredited is responsible for said harm because Accredited was
 21 part of the conspiracy to commit with Golden State and DOES 1 through 10 the wrongful acts of
 22 Misrepresentation, Fraud and Deceit as set forth herein and incorporated by reference and
 23 Negligent Misrepresentation as set forth in paragraphs 73 Through 82 incorporated by reference
 24 and to engage in providing to the plaintiff a predatory and unconscionable 1st Loan and 2nd Loan
 25 as set forth herein and for the wrongful act of engaging in a contract which was an
 Unconscionable Loan as set forth herein and incorporated by reference. Accredited made an
 agreement with Golden State and Does 1 through 10, orally and in writing and as implied by the

1 conduct of the parties, as set forth hereinabove, incorporated by reference, that Accredited
 2 unintended that said wrongful acts would be committed for its own profit and that of Golden State
 3 and Does 1 through 10. Accredited knew because of the plaintiff's failure to provide sufficient
 4 proof of income as required by Accredited's escrow instructions, that Golden State and Does 1
 5 through 10 planned to commit said wrongful acts, and Accredited cooperated with Golden State
 6 and Does 1 through 10 in committing said wrongful acts. Therefore, because Accredited engaged
 7 in said conspiracy with Golden State and Does 1 through 10, it is responsible and liable for their
 8 wrongful acts and all the acts done by Golden State and DOES 1 through 10 in furtherance of
 9 their common plan, and for all the harm and damages caused to the plaintiff from said wrongful
 10 acts.

11 **20. VICARIOUS LIABILITY — ACCREDITED ENGAGED IN A JOINT
 12 VENTURE WITH] GOLDEN STATE AND DOES 1 THROUGH 10 IN ORDER TO
 13 HARM THE PLAINTIFF.**

14 Plaintiff alleges that Accredited, through its managing agents engaged in a joint venture
 15 with Golden State and Does 1 through 10, therefore Accredited is responsible and liable for the
 16 conduct of Golden State and Does 1 through 10 and for all their actions in furtherance of said
 17 joint venture. Said joint venture was created by oral and written agreements and implied by the
 18 conduct of the parties, as set forth in hereinabove, incorporated by reference which alleges facts
 19 that Accredited and Golden State and DOES 1 through 10, combined their skills, knowledge and
 20 property with the intent to carry out a single business undertaking of providing a predatory 1st
 21 Loan and 2nd Loan to the plaintiff, and each had an ownership interest in said business
 22 undertaking. In addition, Accredited and Golden State and DOES 1 through 10 had joint control
 23 over the business undertaking even though they agreed to delegate said control among each
 24 other. In addition, Accredited and Golden State and DOES 1 through 10 agreed to share the
 25 profits of said business and the losses of said business and had an understanding as to the sharing

1 of profits and losses. Therefore, Accredited is responsible and liable to the plaintiff for the
 2 wrongful conduct of Golden State and Does 1 through 10, in furtherance of said business
 3 enterprise and the damage caused to her by said wrongful conduct.

4 **21. VICARIOUS LIABILITY -- ACCREDITED AND BANK OF AMERICA**
 5 **CORP. RECONTRUST AND DEUTSCHE, AS THE TRUSTEE FOR THE MORGAN**
 6 **STANLEY TRUST AND THE MORGAN STANLEY TRUST ARE JOINT VENTURERS.**

7 The plaintiff alleges that the terms of the PSA, as set forth herein and incorporated by
 8 reference, constitute evidence of the creation and existence of a joint venture between: 1) the
 9 seller of the mortgage loans — Accredited and 2) the Servicer of the loans at that time -
 10 Countrywide, and its successor Servicers and sub-Servicers, namely Bank of America Corp.
 11 doing business as BAC and doing business as ReconTrust, and 3) the trustee Deutsche,
 12 individually and as trustee of the Morgan Stanley Trust and 4) the Morgan Stanley Trust.
 13 Pursuant to the PSA, said defendants had an agreement to pool and service mortgages between
 14 Accredited, as seller, Countrywide, as Servicer, and its successor Servicer, Bank of America
 15 Corp. and its sub-servicer's BAC and ReconTrust, and Deutsche as the trustee, and the Morgan
 16 Stanley Trust. Accredited provided the mortgage loans, Countrywide and its successors provided
 17 servicing of the loans and the Morgan Stanley Trust provided the financing or money. Finally,
 18 pursuant to the PSA, there was an agreement on the fees each party could collect as well as their
 19 liability for losses. Moreover, the Morgan Stanley Trust's revenue resulted primarily
 20 from the sale of mortgage loans through securitization on purchased pools of home loans.
 21 Therefore, said defendants engaged in a joint venture and each of them is responsible and liable
 22 for each other's conduct in acting in furtherance of said joint venture. Said defendants thereby
 23 combined their skills, knowledge and property with the intent to carry out a single business
 24 undertaking and each had an ownership interest in said business undertaking. Said defendants
 25 had joint control over said business undertaking even though they agreed to delegate said control

1 among each other. In addition, said defendants had an understanding as to the sharing of profits
 2 and losses. Therefore, said defendants are responsible and liable for each other's wrongful
 3 conduct toward the plaintiff in furtherance of said business enterprise and for the damage caused
 4 to her by said wrongful conduct.

5 **22. VICARIOUS LIABILITY - BECAUSE ACCREDITED AND BANK OF**
 6 **AMERICA CORP., RECONTRUST, AND DEUTSCHE, INDIVIDUALLY AND AS THE**
 7 **TRUSTEE FOR THE MORGAN STANLEY TRUST AND THE MORGAN STANLEY**
 8 **TRUST ARE E VENTURERS, THEY ARE VICARIOUSLY LIABLE FOR EACH**
 9 **OTHER'S CONDUCT. BECAUSE THEY ARE VICARIOUSLY LIABLE FOR**
 10 **ACCREDITED'S CONDUCT, THEY ARE ALSO LIABLE FOR THE CONDUCT**
 11 **GOLDEN STATE AND DOES 1 THROUGH 10 WHICH ARE ACCREDITED'S**
 12 **AGENTS, CO-CONSPIRATORS, CO-JOINT VENTURERS AND THOSE WHICH**
 13 **ACCREDITED AIDED AND ABETTED.**

14 The plaintiff incorporates by reference paragraph 1 through 22. Because each joint
 15 venture is liable for the acts of its co-joint venturers, Bank of America Corp., ReconTrust,
 16 Deutsche, and the Morgan Stanley Trust are liable for the wrongful acts of Accredited and the
 17 damage caused thereby to the plaintiff. Because Golden State and DOES 1 through 10, was at all
 18 times material to this Complaint, the agents, co-conspirators and co-joint venturers of Accredited
 19 and were aided and abetted by Accredited in committing wrongful acts and damages, said joint
 20 venturers are also vicariously liable for Golden State and DOES 1 through 10's wrongful acts and
 21 for the damages they caused the plaintiff as alleged in this Complaint.

22 **23. GOLDEN STATE'S AND DOES 1 THROUGH 10'S REPRESENATIONS**
 23 **AND ACCREDITED'S REPRESENTATIONS TO THE PLAINTIFF REGARDING**
 24 **OBTAINING A LOAN TO FINACNE THE PURCHASE OF THE SUBJECT**
 25 **PROPERTY.**

PLAINTIFFS COMPLAINT FOR (1) FRAUD; (2) VIOLATIONS OF TRUTH IN
 LENDING ACT; (3) VIOLATIONS IN REAL ESTATE SETTLEMENT PROCEDURES ACT; (4) VIOLATIONS
 OF CALIFORNIA CIVIL CODE SECTIONS 2923.5 and 2924

1 On or about September 5, 2006, the plaintiff went to Golden State's office in Fremont,
 2 CA and signed a stack of loan documents provided to her by DOES 1 through 3 in order to
 3 procure the 1st Loan and the 2nd. That she would not have to make any down payment to
 4 purchase the property because the loan would cover the down payment of about \$115,000.00.

5 **24. GOLDEN STATE'S AND DOES 1 THROUGH 10'S KNOWLEDGE AND**
 6 **ACCREDITED'S KNOWLEGE REGARDING THE PLAINTIFF'S FINANCIAL**
 7 **CONDITION AND HER OWNER-OCCUPYER STATUS AT THE TIME THEY**
 8 **PROCURED THE ACCREDITED LOAN**

9 The plaintiff alleges that Golden State and DOES 1 through 10 knew and Accredited
 10 knew through its agents Golden State and DOES 1 through 10 at the time DOE 1 and DOE 3
 11 were negotiating for the loan and procuring the loan from Accredited for the plaintiff that:

12 A. In June 2006, through the services of Golden State and DOE 1 the plaintiff procured a
 13 1st Loan and a 2nd Loan for her to purchase the property known as 40224 Blanchard
 14 Street, Fremont, CA (hereinafter "Blanchard Street"). The 1st loan on Blanchard Street in
 15 the amount of \$548,000.00 required her to make monthly payments of \$3,212.10 to
 16 Countrywide and that the 2nd Loan on Blanchard Street in the amount of \$137,000.00
 17 required her to make monthly payments of \$1,255.66 to GMAC company. Furthermore,
 18 said defendants knew that the plaintiff, at the time Golden State was negotiating and did
 19 procure the Accredited loans, that the plaintiff was in debt for the two loans on Blanchard
 20 Street in the total amount of \$685,000.00 and was paying total monthly payments of
 21 \$4,467.66 for said two loans on Blanchard Street. Furthermore, the plaintiff is informed
 22 and believes now, although she did not know at the time she procured said loans, that the
 23 1st loan on Blanchard Street was an adjustable predatory "pick and pay" interest rate loan
 24 in that the interest rate would go up over time and principal would not be paid down over
 25 time, and that both the 1st and 2nd loans on Blanchard Street had prepayment penalties.

20 B. That the plaintiff was, in fact, at that time she signed documents for the 1st Loan and
 21 2nd Loan, the owner-occupier of Blanchard Street and had been a California licensed day
 22 care provider only since June 2006 and that her monthly gross income at the time Golden
 23 State was negotiating and did procure the Accredited loans, was \$2,000 per month. The
 24 plaintiff did not have a college degree or professional license other than a day care
 25 license at that time. Golden State, Accredited and Does 1 through 10 knew these facts
 because the plaintiff told DOE 1 and DOE 3 these facts.

20 C. That the plaintiff was not a partner in her husband's business -- AR Imaging -- and
 21 had no other income other than from her day care business which she operated at

1 Blanchard Street. Golden State, Accredited and Does 1 through 10 knew these facts
 2 because the plaintiff told DOE 1 and DOE 3 these facts

3 D. That Golden State and DOES 1 to 10 and Accredited, knew that the plaintiffs husband
 4 was not going to be responsible for the payment of any loans to finance the plaintiff's
 5 purchase of the Subject Property. Furthermore, said defendants knew that the 3 bank
 6 statements which the plaintiff brought to with her when she signed the loan documents
 7 were in fact statements regarding her joint bank account with her husband. Said three
 8 statements showed a balance of approximately \$10,000 per month during June, July and
 9 August 2006. The sum of \$10,000 on each statement, included each month approximately
 10 \$2,000.00 which was the plaintiff's monthly income from her business and
 11 approximately \$1,000.00 which was her husband's monthly income and approximately
 12 \$7,000.00 which was the plaintiffs and her husband's savings over time. Other than some
 13 furniture and household and personal items of limited value, Golden State knew that the
 14 plaintiffs total assets at the time it procured the Accredited loans were only evidenced by
 15 said cash amount of approximately \$7,000.00 in said joint bank account. Golden State,
 16 Accredited and Does 1 through 10 knew these facts because the plaintiff brought these
 17 bank statements with her and her child care license and showed them to DOE 1 and DOE
 18 3 at the time she signed the loan documents. Despite the facts alleged in this paragraph
 19 29, Accredited contracted with the plaintiff to provide her with the 1st Loan and 2nd
 20 Loan to finance the purchase of the Subject Property.

21 **25. GOLDEN STATE'S AND DOES 1 THROUGH 10'S AND ACCREDITED'S**
 22 **REPRESENTATIONS TO THE PLAINTIFF AT THE TIME SHE SIGNED THE 1st**
 23 **NOTE AND 2nd NOTE AND OTHER DOCUMENTATION TO OBTAIN THE**
 24 **ACCREDITED LOANS**

25 The plaintiff alleges that DOE 1 told the plaintiff THAT she was to sign documents to
 26 procure a loan to finance the Subject Property at Golden State's office in Fremont California
 27 sometime prior to September 5, 2006. When the plaintiff arrived at Golden State's Office, the
 28 plaintiff believed, as represented to her by Doe I that Accredited would provide her one loan for
 29 30 years at the fixed interest rate of approximately 6.00% and that she would not be charged
 30 more money if she paid the loan off early. Instead, when she arrived at Golden State's office in
 31 Fremont to sign the loan documents, DOE 3, the supervisor took over and told the plaintiff he
 32 was in charge, and speaking English to the plaintiff, he told her that:

33 A. Accredited would not provide her one loan at 30-years term at the fixed rate of 6.00%,
 34 but that it would provide 2 loans to her -- a 1st Loan in the amount of \$450,000.00 at

1 8.400% which would remain fixed over thirty years and that when she made payments on
 2 this 1st Loan she would pay interest and principle and a 2nd Loan in the amount of
 3 \$115,000.00 at 11.650%.which would be at an adjustable rate that could go up or down
 4 over time and that when she made payments on this 2nd Loan she would pay interest and
 5 principle. DOE 3 told the plaintiff what her initial monthly payments would be. DOE 3
 6 told the plaintiff it was in her best interest to sign for these two loans, even though they
 7 were not at the then-current interest rate of about 6.00 percent because she would not
 8 have to make any down payment in order to purchase the property, and that because she
 9 did not have 20% of the total value of the property, or \$115,000.00 to make the down
 10 payment, this was the only way she would be able to purchase the property because the
 11 2nd Loan in the amount of \$115,000.00 would serve to finance the down payment
 12 entirely. DOE 3 told the plaintiff that she could easily refinance both of the loans in a
 13 couple of years.

14 B. That she should sign a stack of loan documents to obtain the 15' Loan and 2nd Loan
 15 because in a couple of years the price of the Subject Property would go up very high and
 16 she could easily refinance the loans at a low rate of interest which he expected would be
 17 in effect in a couple of years.

18 **26. GOLDEN STATE'S AND DOES 1 THROUGH 10'S AND ACCREDITED'S**

19 **OMMISSION OF MATERIAL FACTS REGARDING THE 1ST and 2ND LOANS MADE**
 20 **TO THE PLAINTIFF AT THE TIME SHE SIGNED THE 1ST NOTE AND 2nd NOTE**
 21 **AND OTHER LOAN DOCUMENTATION FOR THE ACCREDITED LOANS.**

22 The plaintiff allege that DOE 3, speaking English, did not tell the plaintiff the following
 23 items A through I at the time she was at Golden State's office and signed the loan documents:

- 24 A. There were prepayment penalties on the 1st Loan and 2nd Loan.
- 25 B. That the interest rate on the 1st Loan was adjustable and could go up over time and was
 very likely to go up.
- 26 C. That the 2nd Loan was an interest only loan with a balloon payment.
- 27 D. That in fact, she was required by the Lender to owner-occupy the Subject Property
 within six months after closing of escrow unless there was an exigent circumstance.
- 28 E. That Golden State was to take from the loan proceeds a Loan Origination Fee of
 \$4,000.00, and a Processing fee of \$995.00 and that the "Yield Spread" to Golden State
 was "\$5,175.00 POC' That Golden State was obtaining said Yield Spread fee because
 when it obtained a higher interest rate at loan from Accredited, Accredited awarded it
 such a fee. Golden State failed to tell the plaintiff that it could have obtained for her a
 more favorable loan at a lower interest rate, because it wanted to obtain this fee from
 Accredited.

1 F. That said 1st loan was a negative amortization loan which was predatory as set forth in
 2 paragraph 32 incorporated by reference. That negative amortization was certain to occur if
 3 the plaintiff made initial monthly payments at the teaser rate of 8.400% and according to
 4 the schedule in the TILDS.

5 G. That the initial interest rate on the plaintiff's 1st Loan was discounted.

6 H. DOE 3 failed to read the loan papers to her and to have them read to her in her native
 7 language URDU. DOE 1 did not read or disclose to the plaintiff the Annual Percentage
 8 Rate (hereinafter "APR") regarding the 1st Loan and 2nd Loan. DOE 3 failed to read the
 9 Final Truth-In-Lending Disclosure Statement (hereinafter "TILDS") to the plaintiff and
 10 to tell her what it disclosed.

11 **27. THE 1ST LOAN AND 2ND LOAN WERE PREDATORY LOANS IN**
 12 **THAT 1) THE 1ST LOAN INVOLVED NEGATIVE AMORTIZATION AND 2) THE 1ST**
 13 **LOAN AND 2ND LOAN WERE UNDERWRITTEN WITHOUT REGARD TO THE**
 14 **ORROWER'S ABILITY TO REPAY THE LOANS.**

15 The plaintiff alleges that the 1st Loan was a predatory loan as follows:

16 A. The interest rate on plaintiffs 1st loan was pegged to a variable index — the LIBOR
 17 index. However, the initial interest rate on plaintiff's loan was discounted and not based
 18 on the LIBOR index. Instead, it was based on a "teaser" rate of 8.400 % and the first
 19 monthly payment was \$3,504.46 and was to be in effect for two years, after which the
 20 Change Date would occur every six months and the interest rate would be adjusted by
 21 adding 5.400% to the then-current LIBOR index. The "Final Truth-In-Lending
 22 Disclosure Statement (hereinafter "TILDS") discloses 10.516% as the APR on the
 23 plaintiffs 1st loan. The APR is placed in a box explaining that the APR is "The cost of
 24 your credit as a yearly rate. The TILDS also includes a payment schedule as follows:

25 **Number of Payments Amount of Payments** are due monthly beginning

24	\$3,504.46	1 1/1/2006
6	\$3,986.03	11/1/2008
329	\$4,307.03	05/1/2009
1	\$4,303.18	10/1/2036

26 Said TILDS discloses under the box entitled "Variable Rate Feature" that: "This loan has
 27 a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier. The
 28 Current index rate is 5.454." Therefore, given that the plaintiff's initial interest rate was 8.400%,
 29

1 it was not based on the LIBOR index plus the addition of 5.400%, because the TILDS stated
 2 initial index rate of 5.454% plus 5.400 would have been 10.854%. Thus, the initial interest rate
 3 was not based on the index used to make later adjustments. Although the payment schedule was
 4 based on the teaser rate of 8.400%, the actual interest rate changed after plaintiff's first monthly
 5 payment and it was in fact, at least the APR rate of 10.5 16% calculated according to the LIBOR
 6 index, instead of the teaser rate of 8.400%. While the actual interest changed almost
 7 immediately, said initial minimum payments for the first two years of the loan were based on the
 8 initial teaser rate. Thus, if the plaintiff made the initial payment for two years and made
 9 payments according to the schedule disclosed in the TILDS, her payments would not cover the
 10 interest due on the mortgage during the first two years. The principal of the 1st Loan was
 11 therefore scheduled to increase if plaintiff made payments according to the TILDS. This process
 12 is known as negative amortization. Negative amortization occurs when a consumer's required
 13 minimum payment on a loan is less than the full amount of interest and fees due each month. As
 14 a result, when the consumer makes only the minimum payment, the underlying principal owed
 15 increases. The principal amount to repay could be greater than the amount originally borrowed.
 16 Assuming that the value of the home remains constant, negative amortization would cause the
 17 borrower to lose equity in her home because as principal grows during the negative amortization
 18 period, the amount of interest also increases. The plaintiff is informed and believes and thereon
 19 alleges that she did lose equity in her home because of this negative amortization 1st loan and the
 20 overall price of the loan increased. The Office of the Comptroller of the Treasury in its OCC
 21 Advisory Letter -- AL-2003-2 — entitled Guidelines for National Banks to Guard Against
 22 Predatory and Abusive Lending Practices dated February 21, 2003, (hereinafter “OCC Advisory
 23 Letter” stated that negative amortization loans are a predatory and abusive lending practice.

24 B. The plaintiff incorporates by reference paragraphs 29, 33, 34 and 35. The plaintiff
 25 alleges that the 1st Loan and 2nd Loan were predatory because they were underwritten
 predominantly on the basis of the liquidation value of the collateral, without regard to the

1 borrower's ability to service and repay the loan according to its terms absent resorting to
 2 that collateral. This abusive practice leads to "equity stripping." When a loan has been
 3 made based on the foreclosure value of the collateral, rather than on a determination that
 4 the borrower has the capacity to make the scheduled payments under the terms of the
 5 loan, based on the borrower's current and expected income, current obligations,
 6 employment status, and other relevant financial resources, the lender is effectively
 7 counting on its ability to seize the borrower's equity in the collateral to satisfy the
 8 obligation and to recover the typically high fees associated with such credit. The OCC
 9 Advisory letter, described in this paragraph, section A, states that such loans are
 predatory and abusive credit practices and lead to foreclosure rates higher than the norm.

10 **28. GOLDEN STATE'S AND DOES 1 THROUGH 10 AND ACCREDITED'S**
 11 **REQUIREMENTS REGARDING PLAINTIFF'S SHOWING HER FINANCIAL**
 12 **CONDITION AND HER OWNER-OCCUPYER STATUS AT THE TIME SHE SIGNED**
 13 **THE LOAN DOCUMENTS.**

14 At the time the plaintiff signed the loan documents for the 1st and 2nd loan at Golden
 15 State's Office, DOE 3, speaking English told the plaintiff that:

16 A. The loans were being obtained from Accredited through a "reduced documentation
 17 program" and that she only had to provide proof of 3 months bank statements and a copy
 18 of her California child care license. The plaintiff produced her child care license which
 19 she had obtained in June 2006 and also produced her 3 months of statements regarding
 20 her joint bank account with her husband as set forth in Paragraph 29 D incorporated by
 21 reference. At the time the plaintiff signed the loan documents, she told DOE 3 that she
 22 did not know when she could move into the Subject Property to supervise child care on
 23 its premises because she did not have yet have funds to convert the property into a child
 24 care facility and did not yet have customers to place into it. The plaintiff told him that
 25 using the Subject Property for her child care business was her dream. The plaintiff told
 him that she hoped to obtain the funds, convert the property and obtain customers as soon
 as possible and that she would then spend extensive time in the Subject Property to
 supervise child care and would reside in both the Subject Property and in the Blanchard
 Street property. DOE 3 told her that there was no problem regarding what she told him
 about her ability to owner-occupy the Subject Property and that she still qualified as an
 owner-occupier of the subject property and that she should sign the loan documents that
 she was a "owner-occupier" in order to obtain the two loans.

26 B. **ACCREDITED'S INSTRUCTIONS TO THE TITLE COMPANY.** In fact, the
 27 Lender, Accredited's Instructions, issued September 1, 2006, which were part of the loan
 28 documents, that the plaintiff did not read or understand at the time due to her limited
 29 English reading ability and the fact that DOE 3 did not employ a translator to read the
 30 following relevant parts to her in Urdu, contained a section entitled "ADDENDUM TO
 31 LENDERS INSTRUCTIONS, Continued" which stated in relevant part that the plaintiff:

- 1 29. Must provide satisfactory 12 months rental history via 3 cancelled checks + VOR
- 2 30. Copy of business license & proof of 2 years in current business for self-employed
- 3 applicant(s) need proof for 2004.
- 4 31. Assets in the amount of \$11,000 to be verified via bank statements or VOD.
- 5 32. Provide evidence that borrower is co-owner of AR Imaging, closing agent —
- 6 certified copy of interposual transfer deed. At the time the plaintiff signed the Accredited loan
- 7 documents, the plaintiff did not provide proof of her being in a self-employed business for 2
- 8 years. In fact she had been in business since only June 2006, for approximately 3 months. The
- 9 plaintiff did not show assets of \$11,000, but only showed joint bank account statements for three
- 10 months, in which each month, approximately \$2,000.00 represented her own income, \$1,000.00
- 11 represented her husband's income and \$7,000.00 represented their joint savings over time. The
- 12 plaintiff told DOE 3 these facts about the sources of the approximately \$10,000.00 as evidenced
- 13 in the June, July and August 2006 joint bank statements. The plaintiff did not provide any proof
- 14 of any 12 months rental history. In fact GOLDEN STATE and DOES 1 through 10, knew that
- 15 the plaintiff had just purchased the Blanchard Street property, because they had procured the two
- 16 loans for her to purchase this property six months before, and they knew she lived there. The
- 17 plaintiff did not provide any evidence she was a partner in her husband's business, AR Imaging,
- 18 and in fact the plaintiff was not a partner in his business and had zero interest in said business,
- 19 and her husband was contributing zero funds to back the plaintiff's obtaining the loan(s) to
- 20 purchase the Subject Property and he intended to provide zero funds in the future to help her pay
- 21 for the loans. In fact, DOE 3 told the plaintiff and her husband that her husband had zero
- 22 responsibility for the procurement of the loans and for paying the loans because the plaintiff
- 23 would execute an Intersposual Transfer Deed. See Exhibit B, a true and correct copy of said
- 24 instrument recorded on 9/18/06 which the plaintiff did in fact execute.

25 **33. PLAINTIFF'S JUSTIFIABLE AND REASONABLE RELIANCE ON THE**

1 **REPRESENTATIONS OF GOLDEN STATE, DOES 1 THROUGH 10 AND**
 2 **ACCREDITED.**

3 The plaintiff, at that time she signed the loan documents, had limited English language
 4 ability, especially in regard to reading English and she could not read and understand almost all
 5 of the terms in the loan documents which were technical loan terms. Therefore, she completely
 6 relied upon what DOE 3 told her was in the loan documents and she completely believed what
 7 DOE 3 said to her. The plaintiff believed all the representations of the broker and Golden State
 8 and Does 1 through 10 as set forth herein and she signed the loan papers for the 1st Loan and the
 9 2nd Loan and signed all other papers DOE 3 gave her to sign because DOE 3 told her the
 10 documents were correct and it was in her best interest to sign them. Thereby, the plaintiff
 11 obtained the 1st Loan and the 2nd Loan according to a consumer credit transaction and written
 12 contract entered into between Accredited and the plaintiff in the form of:

13 The 1st Deed of Trust described herein and incorporated by reference, a true and correct
 14 copy of which is attached as Exhibit D.

15 The 1st Promissory Note described herein and incorporated by reference, a true and
 16 correct copy of which is attached as Exhibit C.

17 The 2nd Deed of Trust described herein and incorporated by reference, a true and correct
 18 copy of which is attached as Exhibit F.

19 The 2nd Promissory Note described herein and incorporated by reference, a true and correct
 20 copy of which is attached as Exhibit E. The owners of the Subject Property
 21 executed a Grant Deed to the plaintiff, a true and correct copy of which is attached hereto
 22 as Exhibit A.

23 **34. THE REPRESENTATIONS OF GOLDEN STATE AND ACCREDITED**
 24 **WERE, IN FACT, FALSE REGARDING THE PLAINTIFF'S HAVING ENOUGH**
 25 **INCOME TO QUALIFY FOR THE 1ST AND 2ND LOANS.**

26 In fact, the representations of Golden State, Does 1 through 10 and Accredited were false
 27 in that the plaintiff did not have enough income to qualify for the 1st Loan and 2nd Loan to

1 purchase the Subject Property. In fact, the 1st Loan for the sum of \$460,000.00 was a "6-month"
 2 adjustable rate mortgage at the initial two year teaser rate of 8.400%, 1 with the initial monthly
 3 payment due in the amount of \$3,504.46 and the 15 Loan had a prepayment penalty as set forth
 4 in more detail herein and incorporated by reference. The 2nd Loan in the amount of \$1 15,000.00
 5 was a 15-year interest only loan with a balloon payment due in 15 years, on October 1, 2021. The
 6 monthly interest rate was 11.650% interest rate and the first payment due on 11/1/06 was in the
 7 amount of \$1,152.02. Therefore, upon signing the loan documents for the 1st Loan and 2nd Loan,
 8 the plaintiff incurred debt regarding both loans in the total amount of \$575,000.00 and total
 9 monthly payments of \$4,656.48. This was in addition to the two loans on Blanchard Street in the
 10 total amount of \$685,000.00 and the monthly payments for these two loans of \$4,467.66. After
 11 having obtained the 1st Loan and 2nd Loan on the Subject Property, the plaintiff whose monthly
 12 income was at that time approximately \$2,000.00 per month and whose total cash assets were
 13 \$7,000.00 in joint husband and wife savings, was, after the loan documents were signed, carrying
 14 4 loans totaling \$1,260,000.00 and was responsible for 4 monthly payments totaling \$9,124.14.
 15 Therefore the plaintiff, who should have been qualified to pay only about 31% to at most 55% of
 16 her gross income in loan-to-income ratio to pay for mortgage loan(s), was totally qualified to
 17 obtain the 1st Loan and 2nd Loan to purchase the Subject Property and Golden State and DOES 1
 18 through 10 and Accredited knew this. However, DOE 3 told her she did qualify and obtained
 19 said loans from Accredited for her, dooming her to eventually be unable to make payments on
 20 them.

21 **35. THE REPRESENTATIONS OF GOLDEN STATE AND ACCREDITED**
 22 **REGARDING THE TERMS OF THE LOAN WERE, IN FACT, FALSE.**

23 The plaintiff alleges that said the representations of Golden State, Does 1 through 10 and
 24 Accredited were, in fact, false in that:

- 25 A. There were, in fact, prepayment penalties on the 1st Loan and 2nd Loan.

1 B. The interest rates on the 1st Loan was, in fact, adjustable every six months after the
 2 initial two year fixed teaser rate, and could go up over time and was likely to go up.

3 C. The 2nd Loan was, in fact, an interest only loan with a balloon payment.

4 D. That in fact, the plaintiff was required by the Lender to owner-occupy the Subject
 5 Property within six months after closing of escrow unless there was an exigent
 circumstance.

6 **36. DESCRIPTION OF THE 1ST PROMISSORY NOTE FOR \$460,000.00**

7 **AND THE 1st DEED OF TRUST.**

8 On or about September 5, 2006, regarding the 1st Loan , among other documents, the
 9 plaintiff signed the following: the Adjustable Rate Note (hereinafter the “1st NOTE”), a true and
 10 correct copy of which is attached as Exhibit C which included the Adjustable Rate Rider and the
 11 Prepayment Charge rider to Note.

12 A. **DESCRIPTION OF THE 1ST PROMISSORY NOTE FOR \$460,000.00.** The
 13 Promissory Note was for a loan in the amount of \$460,000.00 plus interest payable to the
 14 Lender, Accredited Home Lenders, Inc. The Adjustable Rate Note states:

15 I understand that Lender may transfer this Note. Lender or anyone who takes this Note by
 16 transfer and who is entitled to receive payments under this Note is called the “Note
 Holder.”

17 The loan was called a “LIBOR Six —Month Index” loan. The “Maturity Date” is
 18 October 1, 2036. The Note states: I will make my monthly payments on the 1st day of every
 19 month, beginning on November 1, 2006. I will make these payments every month until I have
 20 paid all of the principal and interest and any other charges described below that I may owe under
 21 this Note. Each monthly payment will be applied as of its scheduled due date and will be applied
 22 to interest before Principal. If on October 1, 2036, I still owe amounts under this Note, I will pay
 23 those amounts in full on that date, which is called the “Maternity Date.”

24 The initial yearly interest rate was 8.400%. The initial payment was on November 1,
 25 2006 was \$3,504.46. The interest rate was to begin to change on October 1, 2008, the first

1 "change Date" and would change on the 1st of every sixth month thereafter, in accordance with
 2 the London market ("Libor") index. The Note states that: "Each date on which my interest rate
 3 could change is called a "Change Date." The new interest rates were to be calculated by adding
 4 Five and 4 tenths percentage points (5.400%) to the current LIBOR index, rounded off to the
 5 nearest 1/8 of one percentage point (0.125%). The interest rate to be paid at the first change date
 6 was not be greater than 9.900% or less and 8.400%. Thereafter the interest rate was to never be
 7 increased or decreased on any single change date by more than 1.500% from the rate of interest
 8 that was paid the preceding six months. The interest rate was never to be greater than 15.400% or
 9 less than 8.400%. There is no mention of MERS in the 1ST Note.

10 **B. THE ADJUSTABLE RATE RIDER.** The Adjustable rate Rider states the same
 11 information about the Interest Rate and monthly payment change, change date, the index,
 12 calculation of changes, limits on interest rate changes, effective date of changes, and notice of
 13 changes as set forth in the Note.

14 **C. THE PREPAYMENT CHARGE RIDER TO NOTE.** The Prepayment Charge
 15 Rider to Note allows for full prepayment or partial prepayments and states:

16 However, if the aggregate amount of the prepayment(s) made during any 12 month
 17 period within 24 months of the date of the Note exceeds 20% of the original principal
 18 amount of the Note, than as consideration for the acceptance of such prepayments I agree
 19 to pay the holder of the Note a sum equal to 6 months interest on the amount by which
 20 "such prepayment(s) exceed 20% of the original principal amount of the Note. Any
 21 prepayments made after said initial 24 month period shall not be subject to any
 22 prepayment charge. I/we confirm that prior to the closing of this mortgage loan, I/we
 23 were offered the option of obtaining a mortgage loan that did not+ require payment of a
 24 prepayment charge and that I/we are agreeing to this prepayment charge in exchange for
 25 a monetary benefit, including but not limited to a rate or fee reduction.

22 **D. THE DEED OF TRUST REGARDING THE 1ST LOAN.** Additionally, based
 23 upon ' information and belief, in connection with the 1st Loan transaction, Accredited took
 24 security interests in the Subject Property in the form of a Deed of Trust recorded with the
 25 Alameda County Recorder's Office on September 18, 2006, Doc. No. 20063518-7, ("the 1st

1 DOT"). The plaintiff also signed the security instrument -- the Deed of Trust recorded 9/18/06
 2 (hereinafter the "1st DOT"), a true and correct copy of which is attached as Exhibit D. The 1st
 3 DOT, the following is stated regarding the parties:

4 "Security Instrument means these documents, which is dated September 1, 2006 together
 5 with all riders to this document. "Borrower" is Rahila Khan, a married woman as her
 6 sole and separate property... "Lender" is Accredited Home Lenders, Inc... . "Trustee is
 7 Alliance Title. "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a
 8 separate corporation that is acting solely as a nominee for Lender and Lender's
 9 successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is
 10 organized and existing under the laws of Delaware, and has an address and telephone
 11 number of P.O. Box 2026, Flint, MI 48501-2026, Tel (888) 679-MERS.

12 In addition the 15th DOT states:

13 1. **OCCUPANCY:** Borrower shall occupy, establish and use the Property as

14 Borrower's principal residence within 60 days after the execution of this Security Instrument and
 15 shall continue to occupy the Property as Borrower's principal residence for at least one year after
 16 the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be
 17 unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's
 18 control.

19 37. Acceleration; Remedies. Lender shall give notice to Borrower prior to
 20 acceleration following Borrower's breach of any covenant or agreement in this Security
 21 Instrument (but no prior to acceleration under Section 18 unless Applicable Law provides
 22 otherwise). The notice shall specify; (a) the default; (b) the action required to cure the default; (c)
 23 a date, not less than 30 days from the date the notice is given to Borrower, by which the default
 24 must be cured; and (d) that failure to cure the default on or before the date specified in the notice
 25 may result in acceleration of the sums secured by this Security Instrument and sale of the
 Property. The notice shall further inform Borrower of the right to reinstate after acceleration and
 the right to bring a court action to assert the non-existence of a default or any other defense of
 Borrower to acceleration and sale. If the default is not cured on or before the date specified in the

1 notice, Lender at its option may require immediate payment in full of all sums secured by this
 2 Security Instrument without further demand and may invoke the power of sale and any other
 3 remedies permitted by Applicable Law. Lender shall be entitled to collect all expense incurred in
 4 pursuing the remedies provide in this Section 22, including, but not limited to reasonable
 5 attorney's fees and costs of title evidence.

6 If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a
 7 written notice of the occurrence of an event of default and of Lender's election to cause the
 8 Property to be sold. Trustee shall cause this notice to be recorded in each county in which any
 9 part of the Property is located. Lender or Trustee shall mail copies of this notice as prescribed by
 10 applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee
 11 shall give public notice of sale to the persons and in the manner prescribe by Applicable Law. 15.
 12 All notices given by Borrower or Lender in connection with this Security Instrument must be in
 13 writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to
 14 have been given to Borrower when mailed by first class mail or when actually delivered to
 15 Borer's notice address if sent by other means. ...The notice address shall be the Property Address
 16 unless Borrower has designed a substitute notice address by notice to the Lender. .

17 **38. DESCRIPTION OF THE 2ND PROMISSORY NOTE FOR \$115,000.00 AND
 18 THE 2ND DEED OF TRUST.**

19 On or about September 5, 2006, regarding the 2nd Loan, the plaintiff signed the
 20 following: a 2nd Promissory Note (hereinafter the "2nd Note"), a true and correct copy of which is
 21 attached as Exhibit E, and signed an Adjustable Rate Rider and the security instrument. The
 22 plaintiff is informed and believes and thereon states that this 2nd Note constituted a 15-year
 23 interest only loan at 1 1.650% interest rate with a balloon payment due in 15 years, on October 1,
 24 2021. The first payment due on 11/ 1/06 was in the amount of \$1,152.02. It was an interest only
 25 loan. Additionally, based upon information and belief, in connection with the 2nd Loan

1 transaction, Accredited took a security interests in the Subject Property in the form of a Deed of
 2 Trust recorded with the Alameda County Recorder's Office on September 18, 2006 -- the second
 3 Deed of Trust ("the 2nd DOT"), a true and correct copy of which is attached as Exhibit F.
 4 Regarding the 2nd Loan, a Deed of Trust and Request for Notice of Default recorded 9/18/06,
 5 Alameda County, Doc. No. 2006351808 (Exhibit F) states that the lender is Accredited, the
 6 trustee is Alliance Title and the beneficiary is MERS. Said 2nd Deed of Trust states: "...and the
 7 beneficiary MERS (solely as nominee for Lender, as hereinafter defined, and Lender's
 8 successors and assigns), MERS is organized and existing under the laws of the State of
 9 California and has an address of 15090 Avenue of Science, San Diego, CA 92128."

10 **39. THE FIRST CHANGE OF LOAN SERVICER — TO COUNTRYWIDE.**

11 On or about November 1, 2006, the plaintiff commenced making timely and full monthly
 12 payments to Accredited for the 1st DOT and 2nd DOT. On or about February 2007, the plaintiff is
 13 informed and believes and thereon alleges that Countrywide and Accredited represented to the
 14 plaintiff that she was to make monthly payments for the 1st DOT and 2nd DOT to Countrywide,
 15 and not to Accredited, and she commenced to make timely and fully monthly payments to
 16 Countrywide. The plaintiff is informed and believes and thereon alleges that Countrywide was
 17 the servicer of the plaintiffs Loans, and in fact Countrywide and Accredited told her that
 18 Countrywide owned both loans.

19 **40. OVERVIEW OF THE CREATION OF THE MORGAN STANLEY TRUST
 20 AND ACCREDITED'S POSSIBLE SALE AND TRANSFER OF THE PLAINTIFF'S 1ST
 21 LOAN AND 2ND LOAN TO SAID TRUST AS DESCRIBGED IN THE "FREE WRITING
 22 PROSPECTUS" FILED WITH THE SEC ON MARCH 23, 2007.**

23 The plaintiff is informed and believes, based upon the face of the purported "Assignment
 24 of Deed of Trust dated 6/28/11, as set forth and incorporated by reference, that some "beneficial
 25 interest" under the 1st Loan was somehow conveyed at some time to "Deutsche Bank National

1 Trust Company, as trustee for the holders of the Morgan Stanley Home Equity Loan Trust, 2007-
 2, Mortgage Pass through Certificates, Series 2007-2". Plaintiff is informed and believes and
 3 alleges based upon relevant SEC filings that Accredited may have attempted to securitize the
 4 plaintiffs 1st Loan and 2nd Loan by grouping them into a collateral pool which was sold to the
 5 Morgan Stanley Trust pursuant to a Pooling and Servicing Agreement. This trust raised cash to
 6 pay for the loans by selling bonds or certificates to investors. On March 23, 2007, the Morgan
 7 Stanley Trust filed its Free Writing Prospectus under Securities Act Rules with the SEC —its
 8 first filing with the SEC. See said document on the SEC website at:

9 <http://www.sec.gov/Archives/edgar/data/1030442/000091412107000758/ms7888449-fwp.txt>

10 The Morgan Stanley Trust's SEC CIK Code for all SEC filings is 0001393674. The Free
 11 Writing Prospectus was in regard to the issuance of Mortgage Pass-Through Certificates, Series
 12 2007-2, in the amount of \$846,247,000 and the "Summary" pages S-6 and S-7 of said Free
 13 Writing Prospectus, stated that the "Transaction Parties" were:

14 Sponsor: Morgan Stanley Mortgage Capital Inc.,
 15 Depositor: Morgan Stanley ABS Capital I Inc.
 16 Issuing Entity: Morgan Stanley Home Equity Loan Trust 2007-2.
 17 Trustee: Deutsche Bank National Trust Company, a national banking
 association with its corporate trust office at 1761 East St. Andrew Place, Santa Ana,
 California 92705, Attention: Trust Administration MS07X2, telephone number (714)
 247-6000.

18 Master Servicer and Securities Administrator: Wells Fargo Bank, National
 19 Association, a national banking association.

20 Servicers: Saxon Mortgage Services, Inc.
 21 Countrywide Home Loans Servicing LP, a Texas limited partnership with its
 22 principal executive offices at 7105 Corporate Drive, Plano, Texas 75024,
 telephone number (972) 526-6285.

23 Original Loan Sellers:

24 Substantially all of the mortgage loans were purchased by the sponsor from the following
 25 loan sellers:

First NLC Financial Services, LLC

1 Wilmington Finance, Inc.

2 Accredited Home Lenders, Inc., a California corporation with its principal executive
offices at 15253 Avenue of Science, Building 1, San Diego, California 92128, telephone
number (858) 676-2100.

3 The Interest Rate Swap Provider and Interest Rate Cap Provider was:

4 Morgan Stanley Capital Services Inc., a Delaware corporation with its principal executive
offices at 1585 Broadway, New York, New York 10036, telephone number (212) 761-
4000.

5 Morgan Stanley Capital Services Inc. conducts business in the over-the-counter
derivatives market, engaging in a variety of derivatives products, including interest rate swaps,
6 currency swaps, credit default swaps and interest rate options with institutional clients.
7

8

9

10 **41. THE MORGAN STANLEY TRUST'S "PROSPECTUS" AND "POOLING
11 AND SERVICING AGREEMENT" AND NEW YORK GOVERNING LAW.**

12 On April 2, 2007, the Morgan Stanley Trust filed a Prospectus pursuant to Rule 424(b)(5)
("the Prospectus") with the SEC, an true and correct excerpt of which is attached as Exhibit I.
13 Said Prospectus was for the issuance of the same amount of certificates and included the same
14 parties to the transactions forming said trust, as are set forth in the March 23, 2007 Free Writing
15 Prospectus, described in Paragraph 40 incorporated by reference. The Morgan Stanley Trust is a
16 REMIC, a "real estate mortgage investment conduit" within the meaning of Section 860D of the
17 Internal Revenue Code. See section 860A through 860G of Subchapter M of Chapter 1, Subtitle
18 A of the Internal Revenue Code, and related provisions and regulations, rulings or
19 pronotmcements promulgated thereunder. On March 1, 2007, the Pooling and Servicing
20 Agreement (hereinafter the "PSA") for said trust was filed with the SEC. A true and correct
21 excerpted copy of the PSA is attached as Exhibit J. The Morgan Stanley Trust was an express
22 business trust formed under New York law as set forth in subsection (c) of Article II of the PSA
23 entitled Conveyance Of Mortgage Loans; Representations And Warranties. Thus, the trust was
24 and is governed by New York business trust law, New York statutes, including the New York
25

1 Uniform Commercial Code and New York common law (hereinafter "New York governing
 2 law"). The PSA required Accredited, which sold mortgage loans to the trust, to endorse the
 3 original mortgage notes ("Notes") and deliver them to the trustee of the Morgan Stanley
 4 securitization trust by the "Closing Date" Article I of said PSA defined the "Closing Date" as
 5 April 3, 2007. In order for the transfer to be valid, pursuant to the terms of the PSA, pursuant to
 6 New York Governing Law, and in conformity with IRS rules pertaining to favorable tax
 7 treatment of a REMIC, the properly endorsed, original Notes had to be delivered before the trust
 8 closed on the Closing Date or within 90 days thereafter pursuant to the Eighth Amended And
 9 Restated Mortgage Loan Purchase And Warranties Agreement Subsection 6.03 Delivery of
 10 Mortgage Loan Documents which states:

11 In the event any document required to be delivered to the Custodian
 12 in the Custodial Agreement, including an original or copy of any document submitted for
 13 recordation to the appropriate public recording office, is not so delivered to the
 14 Custodian, or to such other Person as the Purchaser shall designate in writing, within 90
 15 days following the related Closing Date (other than with respect to the Assignments of
 16 Mortgage which shall be delivered to the Custodian in blank and recorded subsequently
 17 by the Purchaser or its designee), and in the event that the Seller does not cure such
 18 failure within 30 days of discovery or receipt of written notification of such failure from
 19 the Purchaser, the related Mortgage Loan shall, upon the request of the Purchaser, be
 20 repurchased by the Seller at the price and in the manner specified in Subsection 9.03.

21 Therefore, according to the PSA, any transfer of Notes outside of that period would
 22 violate the governing instrument of the trust. The failure to follow the terms of the PSA in
 23 transferring a Note would invalidate the transfer and mean that the Note never became part of the
 24 Trust. If the Morgan Stanley Trust did not receive the "Note" regarding the plaintiff's 1st Loan in
 25 a valid form required by the PSA by the Closing Date, or if there was a defect in the transfer, the
 Lender could cure the defect within 30 days after the defect was discovered, providing the defect
 was discovered within 90 days after the Closing Date, as provided by the PSA. If the trust did not
 receive the Note, the Note never became part of the Morgan Stanley Trust. Therefore, the
 mortgages or deeds of trust were to be conveyed to the Morgan Stanley Trust by the Closing date

1 or within the 90-day period thereafter, in order for them to be part of the trust and in order to
 2 avoid violating relevant New York law and IRS regulations.

3 **42. THE LOCATION AND EXISTENCE, IF ANY, OF THE 1ST NOTE AND**
 4 **2ND NOTE AND THE 1ST DOT AND 2ND DOT ARE UNKNOWN TO THE PLAINTIFF**
 5 **F AT THIS TIME.**

6 The plaintiff is informed and believes and therefore alleges, based upon the Assignment
 7 of Deed of Trust, Exhibit G that the purported beneficiary who initiated the foreclosure
 8 proceedings through its agent Recontrust, is MERS. In said Assignment, MERS states it is the
 9 "holder" of the 1st DOT and 1st Note which it purports to assign to Deutsche as trustee for the
 10 Morgan Stanley Trust.

11 The plaintiff does not know where the original promissory 1st Note and 2nd Note and 1st
 12 DOT and 2nd DOT, are located, if they still exist, for two essential reasons:

13 (1) In the PSA, Exhibit A -- the Mortgage Loan Schedule -- which identified all the
 14 Accredited loans transferred to the Morgan Stanley Trust has been left blank in the PSA
 15 and only states: "(Delivered to the Trustee on the Closing Date)." This Exhibit A is
 16 attached to the Assignment and Recognition Agreement, dated April 3, 2007, which is
 17 Exhibit Q in the PSA dated March 1, 2007. The plaintiff does not know where the
 18 Assignments of the 1st DOT and 2nd DOT from Accredited to Deutsche are on the
 19 MERS system, if they exist. The MERS system is not public, but is a recording system
 20 outside of the local recorder's offices. During the lifetime of the mortgage, the beneficial
 21 ownership interest or servicing rights may be transferred among MERS members (MERS
 22 assignments), but these assignments are not publicly recorded; instead they are tracked
 23 electronically in MERS's private system.

24 (2) In the PSA, Article II entitled Conveyance Of Mortgage Loans. Schedule I -- the
 25 Mortgage Loan Schedule — referred to in Article II, Section 2.02 Acceptance by the
 21 Trustee of the Mortgage Loans requires that within 90 days after the Closing Date, the
 22 Trustee Deutsche was required to deliver to the Depositor and the Servicers, a Document
 23 Certification and Exception Report, to the effect that, as to each applicable Mortgage
 24 Loan listed in the Mortgage Loan Schedule — Schedule I all documents were in its
 25 possession, reviewed and "appear regular on their face". Within 90 days after the Closing
 Date, the applicable Servicer, based solely on the list of MERS Designated Mortgage
 Loans and screen printouts from the MERS System provided to such Servicer by each
 applicable Originator no later than 45 days after the Closing Date) shall confirm, on
 behalf of the Trust, that the Trustee is shown as the Investor with respect to each MERS

Designated Mortgage Loan on such screen printouts Schedule I has been left blank in the PSA and only states: "(Delivered to the Securities Administrator and the Trustee and not attached to the Pooling and Servicing Agreement).

43. RELEVANT PARTS OF THE PSA APPLY TO SHOW THAT MERS HAD NO AUTHORITY WHATSOEVER AS THE "HOLDER" OF THE 1ST DOT AND THE 1ST NOTE TO MAKE AN ASSIGNMENT OF THE 1ST nor AND THE 1ST NOTE TO THE MORGAN STANLEY TRUST, THEREFORE THE ASSIGNMENT IS VOID AB INITIO.

Relevant parts of the PSA show:

A. THE PSA REQUIRED ACCREDITED TO DELIVER THE PLAINTIFF'S 1ST AND 2ND NOTES TO THE CUSTODIAN DEUTSCHE BY THE CLOSING DATE OR 90 DAYS THEREAFTER.

Pursuant to the PSA, Accredited was required to deliver to the Custodian Deutsche, the 1st Note and 2nd Note in the form required by Exhibit A, "Contents of Each Mortgage File", attached to the Eighth Amended and Restated Mortgage Loan Purchase and Warranties Agreement dated August 1, 2006 which is referred to in the Assignment and Recognition Agreement, dated April 3, 2007, which is Exhibit Q in the PAS dated March 1, 2007. This Exhibit A specifically required that the Seller Accredited was to deliver to the Custodian Deutsche, in pertinent part: "a. the original Mortgage Note bearing all intervening endorsements, endorsed "Pay to the order of, without recourse" and signed in the name of the last endorsee (the "Last Endorsee") by an authorized officer.

B. THE PSA REQUIRED ACCREDITED TO DELIVER THE ASSIGNMENTS OF THE 1ST AND 2ND MORTAGES -- the 1st DOT AND 2nd DOT -- TO THE CUSTODIAN DEUTSCHE BY THE CLOSING DATE OR 90 DAYS THEREAFTER.

Pursuant to the PSA, Accredited was required to deliver to the Custodian Deutsche, the assignment of the 1st DOT and the 2nd DOT in the form required by the PSA in Exhibit A, "Contents of Each Mortgage File", attached to the Eighth Amended and Restated Mortgage Loan Purchase And Warranties Agreement dated August 1, 2006 which is referred to in the Assignment And Recognition Agreement, dated April 3, 2007, and which is Exhibit Q in the PSA. This Exhibit A specifically required that the Seller Accredited was to deliver to the Custodian, Deutsche, in pertinent part: "(e) except with respect to each MERS Designated Mortgage Loan, the original Assignment of Mortgage for each Mortgage Loan, in form and substance acceptable for recording.

Plaintiff's 1st DOT described in paragraph 37 (Exhibit D), and 2nd DOT described herein and attached as (Exhibit F) purported on the face of the instruments to involve MERS. Regarding MERS Designated Mortgage Loans, Article I of the PSA and the Eighth Amended and Restated Mortgage Loan Purchase and Warranties Agreement dated August 1, 2006 provided the following relevant definitions:

MERS Designated Mortgage Loan: Mortgage Loans for which (a) the Seller has designated or will designate MERS as, and has taken or will take such action as is necessary to cause MERS to be, the mortgagee of record, as nominee for the Seller, in accordance with MERS Procedure Manual, (b) the Seller has designated or will designate the Purchaser as the Investor on the MERS(R) System, and (c) the Seller has designated or will designate the Custodian as the Custodian on the MERS(R) System.

MERS(R) System: MERS mortgage electronic registry system, as more particularly described in the MERS Procedures Manual.

Without having access to MERS electronic system, which is outside public purview, or without having access to reports made for the benefit of the Morgan Stanley Trust to ensure assignments of deeds of trusts into the trust, the plaintiff cannot determine if Accredited, in fact,

1 designated MERS to be "the mortgagee of record, as nominee for the Seller "in accordance with
 2 MERS Procedural manual and in fact, designated the" purchaser (Morgan Stanley Mortgage
 3 Capital, Inc.). as the Investor on the MERS System and in fact, designated "the Custodian
 4 (Deutsche National Bank Trust Company) as the Custodian on the MERS System.

5 However, according to the PSA's definition of MERS Designated Mortgage Loan,
 6 Accredited was required to designate MERS as the "mortgagee of record, as nominee for the
 7 Seller." Pertinent to the plaintiff's case, Accredited was not required to designate MERS as a "M
 8 of the 1st DOT and 1st Note.

9 **C. THE PSA REQUIRED THE DEPOSITOR MORGAN STANLEY ABS
 10 CAPITAL I INC. TO DELIVER THE 1st NOTE AND 2nd NOTE TO THE CUSTODIAN
 11 DEUTSCHE BY THE CLOSING DATE OR WITHIN 90 DAYS THEREAFTER.**

12 In addition to Accredited's duty to convey the Notes and Assignments of Mortgages to
 13 the Custodian Deutsche, in order to establish the trust, the PSA required the Depositor Morgan
 14 Stanley ABS Capital I Inc., to convey to the Trustee Deutsche Bank National Trust Company for
 15 the benefit of the Certificate holders, without recourse, all of the Depositor's interest in the Trust
 16 Fund and the Trustee Deutsche was required on behalf of the Trust accepted the trust fund on the
 17 Closing Date. This requirement is set forth in the PSA in Article II entitled Conveyance of
 18 Mortgage Loans, specifically in subsections (b), (i) and (v) below:

19 (b) In connection with the transfer and assignment of each Mortgage
 20 Loan, the Depositor has delivered or caused to be delivered to the Trustee, for the benefit
 21 of the Certificate holders the following documents or instruments with respect to each
 22 Mortgage Loan so assigned:

23 (i) the original Mortgage Note bearing all intervening endorsements,
 24 endorsed "Pay to the order of , without recourse" and signed(which may be by facsimile
 25 signature) in the name of the last endorsee by an authorized officer. To the extent that
 there is no room on the face of the Mortgage Note for endorsements, the endorsement
 may be contained on an allonge, unless the Trustee is advised in writing by the applicable
 Originator (if required by the applicable Purchase Agreement) or the Depositor, as
 applicable, that state law does not so allow; (v) the original Assignment of Mortgage for

1 each Mortgage Loan endorsed in blank, which may be included in a blanket assignment
 2 or assignments (except with respect to MERS Designated Mortgage Loans)

2 **D. ARTICLE II OF THE PSA DID NOT REQUIRE THE DEPOSITOR**

3 **MORGAN STANLEY ABS CAPITAL I, INC., TO DELIVER TO THE TRUSTEE**
 4 **DEUTSCHE BANK NATIONAL TRUST COMPANY AT THE CLOSING DATE,**
 5 **ASSIGNMENTS OF MORTGAGES IF THEY WERE RECORDED IN THE MERS**
 6 **SYSTEM, BUT RATHER THAT THE "DEPOSITOR" CAUSE THE TRUST TO BE**
 7 **SHOWN AS THE OWNER OF THE MORTGAGE LOANS ON THE MERS SYSTEMS.**
 8 **THE PSA REQUIRED THE APPLICABLE "SERVICER" TO CAUSE THE TRUST TO**
 9 **BE SHOWN AS THE OWNER OF THE MORTGAGES ON MERS RECORDS, INSTEAD**
 10 **OF CONVEYING ASSIGNMENTS OF MORTGAGES.** Article II of the PSA entitled

11 Conveyance of Mortgage Loans, states in relevant part.

12 If any Mortgage has been recorded in the name of Mortgage Electronic
 13 Registration System, Inc. ("MERS") or its designee, no Assignment of Mortgage in favor
 14 of the Trustee will be required to be prepared or delivered and instead, the applicable
 15 Servicer shall take all reasonable actions as are necessary at the expense of the applicable
 16 Originator to the extent permitted under the related Purchase Agreement and otherwise at
 17 the expense of the Depositor to cause the Trust to be shown as the owner of the related
 18 Mortgage Loan on the records of MERS for the purpose of the system of recording
 19 transfers of beneficial ownership of mortgages maintained by MERS....

20 **E. IN REGARD TO MERS DESIGNATED LOANS, ARTICLE II FURTHER**

21 **REQUIRED THAT IF FORECLOSURE PROCEEDINGS OCCUR, THE APPLICABLE**
 22 **SERVICER SHALL THEN RECORD THE ASSIGNMENT OF MORTGAGE USING A**
 23 **SPECIFIC FORMAT.** Article II of the PSA entitled Conveyance of Mortgage Loans, states in
 24 relevant part:

25 Notwithstanding the foregoing, however, for administrative convenience and
 26 facilitation of servicing and to reduce closing costs, the Assignments of Mortgage shall
 27 not be required to be completed and submitted for recording with respect to any
 28 Mortgage Loan (i) if the Trustee and each Rating Agency have received an Opinion of
 29 Counsel, satisfactory in form and substance to the Trustee and each Rating Agency to the
 30 effect that the recordation of such Assignments of Mortgage in any specific jurisdiction is
 31 not necessary to protect the Trustee's interest in the related Mortgage Note, (ii) if such

Mortgage Loan is a MERS Designated Mortgage Loan. . . . However, with respect to the Assignments of Mortgage referred to in clauses (i) and (ii) above, if foreclosure proceedings occur against a Mortgaged Property, the applicable Servicer shall record such Assignment of Mortgage at the expense of the related Originator (and at no expense to such Servicer) as required pursuant to the related Purchase Agreement. If the Assignment of Mortgage is to be recorded, the Mortgage shall be assigned to "Deutsche Bank National Trust Company, as trustee under the Pooling and Servicing Agreement dated as of March 1, 2007, Morgan Stanley Home Equity Loan Trust 2007-2."

Article I defines MERS Designated Mortgage Loans for purposes of the PSA as set forth above.

F. THE TRUSTEE'S CUSTODIAL FILE. Article II of the PSA requires that "All such mortgage documents held by the Trustee as to each Mortgage Loan shall constitute the "Custodial File". The Custodial File is defined as "With respect to each Mortgage Loan, the file retained by the Trustee consisting of items (a) - (h) as listed on Exhibit K hereto." Exhibit K requires the same items -- item (i) regarding the Note(s) and item (v) regarding assignments of mortgages which are required in Article II entitled Conveyance Of Mortgage Loans, however Exhibit K designates said items as (a) and (e) respectively.

44. THE ASSIGNMENT OF DEED OF TRUST RECORDED ON 6/28/11.

On June 28, 2011, the Servicer Bank of America recorded, unbeknownst to the plaintiff at that time, the Assignment of Deed of Trust regarding the Subject Property (Exhibit G attached hereto) which states on its face:

"Recording Requested by: Bank of America. . . ."

The face of said Assignment of Deed of Trust further states:

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101, Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto Deutsche Bank National Trust Company, as trustee for the holders of the Morgan Stanley Home Equity Loan Trust, 2007-2, Mortgage Pass through Certificates, Series 2007-2 whose address is 09062 Old Annapolis Rd, Columbia, M.D. 20145 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations thereon described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust. Original Lender: Accredited Home Lenders, Inc., a California Corporation
Original Borrower(s): Rahila Kahn, a married woman as her sole ad separate property.
Original Trustee: Alliance Title Date of Deed of Trust 9/1/2006 Original Loan Amount \$460,000.00 Recorded in alameda County, CA on 9/18/2006, book N/A, page N/A and

1 **45. THE ASSIGNMENT OF DEED OF TRUST RECORDED ON 6/28/11 DOES**
2 **NOT MEET THE REQUIREMENTS OF THE PSA THEREFORE IT DOES NOT**
3 **LAWFULLY ASSIGN THE 1ST DOT AND 1ST NOTE TO THE PURPORTED**
4 **BENEFICIARY, THE MORGAN STANLEY TRUST, THEREFORE THE**
5 **ASSIGNMENT IS VOID AB INITIO.**

6
7 In fact, according the PSA's definition of MERS Designated Mortgage Loan, the Seller
8 Accredited was to designate MERS to be, the mortgagee of record, as nominee for the Seller, in
9 accordance with MERS Procedure Manual. The PSA in no way requires or allows MERS to be
10 designated as a "holder" of the deed of trust, instead the PSA states it can be designated as only a
11 mortgagee of record, as nominee for the Seller.
12

13 The word "holder" is specifically defined in the New York Commercial Code and
14 California Commercial Code-201 (b) (20) essentially as follows: A holder is simply a party in
15 possession of a note made out to that party or to bearer. MERS in the Assignment of the Deed of
16 Trust clearly states it "holds" the 1st DOT and somehow "holds" the 1st Note - yet the PSA does
17 not authorize MERS to "hold" these. MERS cannot act beyond the authority given it in the PSA
18 according to New York law. This is especially true because by the Closing Date or 90 days
19 thereafter, the PSA required the 1st Note to be transferred by Accredited to the Custodian
20 Deutsche and to be transferred by Morgan Stanley Abs Capital Inc. to the Custodian Deutsche.
21 Therefore, only the Custodian Deutsche as of the Closing Date or 90 days thereafter is the "holder
22 of the note" and if the Note is held by MERS as of the date of the Assignment, 6/28/11, then the
23 Note is no longer part of the trust, or was never transferred into the trust by the Closing Date. A
24 Note which is not in the trust as of the closing date is not part of the trust pursuant to New York
25 Law and IRS regulations.

1 Specifically, MERS' acting as the holder of the 1st NOTE and the 1st DOT in its
 2 Assignment of Deed of Trust recorded on 6/28/11 to the Morgan Stanley Trust, contradicts the
 3 PSA which required the 1st Note to be delivered by Accredited to Deutsche and to be delivered
 4 by Morgan Abs Depositor to Dutch by the Closing Date April 3, 2007 or 90 days thereafter, so
 5 that in fact, the Morgan Stanley Trust was the holder of the note by the Closing Date or 90 days
 6 thereafter. MERS in fact cannot be the "holder" of the Note which was already conveyed four
 7 years ago to the Trust. or alternatively, if MERS in fact does actually "hold" the 1st Note as of
 8 the date of the recordation of the Assignment of the Deed of Trust — 6/28/11 — then, by direct
 9 inference, the 1st Note was never conveyed by Accredited to Deutsche at the Closing date, four
 10 years ago, and the Note was and is not part of the Morgan Stanley Trust, and said trust has no
 11 authority, in fact to initiate foreclosure proceedings against the plaintiffs Subject Property.
 12 According to the PSA, in order for the Note to be part of the Trust, the 15' Note was to be
 13 endorsed in the form of "Pay to the order of, without recourse" and signed (which may be by
 14 facsimile signature) in the name of the last endorsee by an authorized officer." It was to be
 15 delivered by Accredited to Deutsche by the closing date or 90 days thereafter. New York
 16 business trust law, and the New York Commercial Code required the 1st Note to be transferred
 17 and endorsed appropriately by Accredited to Deutsche by the closing date or 90 days thereafter.
 18 Therefore, MERS, in fact has no authority whatsoever to act as a "holder" to assign, the 1st DOT
 19 on June 28, 2011 to Deutsche, as trustee for the Morgan Stanley trust because that transfer, per
 20 the PSA had to have occurred on the Closing Date or 90 days thereafter, some four years ago.

21 For the foregoing reasons, the assignment is null and void ab initio and Deutsche is not
 22 the beneficiary of record entitled to initiate foreclosure proceedings, by itself or through its
 23 "agent for beneficiary" — Recontrust.

24 **46. THE ROLE OF MERS IN THE ASSIGNMENT OF DEED OF TRUST**
 25 **RECORDED ON 6/28/11 DOES NOT MEET THE REQUIREMENTS SET FORTH IN**

1 **THE 1ST DEED OF TRUST, THEREFORE MERS HAD NO AUTHORITY**
 2 **WHATSOEVER TO ASSIGN THE 1ST DOT AND 1ST NOTE TO THE PURPORTED**
 3 **BENEFICIARY, THE MORGAN STANLEY TRUST, THUS SAID ASSIGNMENT IS**
 4 **VOID AB INITIO.**

5 MERS, in fact, has no authority whatsoever as a “holder” to make an assignment of the
 6 1st DOT and the Note to the purported beneficiary Deutsche because in the 1st Deed of Trust
 7 recorded 9/18/06, as set forth herein and attached (Exhibit D), MERS is defined as solely a
 8 nominee for Lender and its successors and assigns and is the beneficiary. Said 1st Deed of Trust
 9 states:

10 “MERS” is Mortgage Electronic Registration Systems, Inc. MERS is a separate
 11 corporation that is acting solely as a nominee for Lender and Lender’s successors and
 12 assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and
 13 existing under the laws of Delaware, and has an address and telephone number of P.O.
 14 Box 2026, Flint, MI 48501-2026, Tel (888) 679-MERS.

15 Thus, it is shown on the face of the 1st DOT that MERS was not and is not a “holder” of
 16 the 1st Note and 1st DOT, because the 1st DOT refers to MERS as “nominee” and “beneficiary”
 17 under the 1st Deed of Trust, as set forth herein and attached as (Exhibit D). Therefore, MERS is
 18 only authorized when making said Assignment of Deed of Trust to act as a “nominee” and
 19 “beneficiary” — not as a “holder” of the 1st DOT and 1st Note. Thus, it is a violation of the PSA
 20 for MERS to act as a “holder” when it has no power to do so under the 1st DOT and when MERS
 21 cannot become the “holder” of the promissory notes that are secured by the deeds of trust, unless
 22 the rules of the Uniform Commercial Code, as adopted by California’s Commercial Code or
 23 New York’s Commercial Code are followed.

24 Furthermore, it is shown on the face of the 1st Note, that MERS, in fact, has no authority
 25 whatsoever as a “holder” to make an assignment of the 1st Note to the purported beneficiary
 Deutsche because the 1st Note does not identify MERS at all nor does it grant MERS any interest
 whatsoever in the mortgage debt. Again, MERS does not become the holder of the promissory

notes that are secured by the deeds of trust, unless the rules of the Uniform Commercial Code, as adopted by California's Commercial Code or New York's Commercial Code are followed.

MERS is not a party to the Note and the record is barren of any representation that MERS, the purported assignee, had any authority to take any action with respect to the Note. Therefore, the Assignment of the Deed of Trust is not sufficient to establish an effective assignment of the 1st Note.

Furthermore, by law, even if the Assignment of the Deed of Trust is found to be valid, the assignment of the mortgage does not, in itself, also cause the assignment of the 1st Note. Thus the 1st Note could not have been assigned by MERS to the Morgan Stanley Trust. MERS only acted as the nominee or "beneficiary" under the 1st DOT. Since no evidence exists on the face of the 15' Note, as set forth herein and attached as (Exhibit C) that MERS is authorized to be the "holder" of the 15' Note, said 1st Note cannot be transferred to MERS as a "holder". MERS could only transfer, at most, only whatever interest it had in the 1st DOT and it had no interest whatsoever. The promissory note and the deed of trust are inseparable. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity in accordance with California Civil Code Section 2936.

For the foregoing reasons, the Assignment of Deed of Trust is null and void ab initio and Deutsche is not the beneficiary of record entitled to initiate foreclosure proceedings, by itself or through its "agent for beneficiary" — Recontrust.

47. THE ASSIGNMENT OF DEED OF TRUST RECORDED ON 6/28/11 DOES NOT MEET THE REQUIREMENTS OF MERS' OWN "TERMS AND CONDITIONS", THEREFORE IT DOES NOT ASSIGN THE 1ST DOT AND 1ST NOTE TO THE PURPORTED BENEFICIARY, THE MORGAN STANLEY TRUST, AND THE ASSIGNMENT IS VOID AB INITIO.

1 Furthermore, showing that MERS was an is not a "holder" of the 1st Note and 1st DOT is
 2 MERS own "Terms and Conditions", a true and correct excerpt of which is attached hereto as
 3 Exhibit 1, which states in relevant part:

4 MERS shall serve as mortgagee of record with respect to all such mortgage loans solely
 5 as a nominee, in an administrative capacity, for the beneficial owner or owners thereof
 6 from time to time. MERS shall have no rights whatsoever to any payments made on
 7 account of such mortgage loans, to any servicing rights related to such mortgage loans, or
 8 to any mortgaged properties securing such mortgage loans. MERS agrees not to assert
 9 any rights (other than rights specified in the Governing Documents) with respect to such
 mortgage loans or mortgaged properties. References herein to "mortgage(s)" and
 "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust
 supplied.)

10 Said "MERS Terms and Conditions" (Exhibit K) was filed in Re Michele Dart, U.S.
 11 Bankruptcy Court, District of Nevada, Case #08-11007 at {I 2, Docket #47-7.

12 As set forth in said "Terms and Conditions", it is clear that MERS, itself, states that in
 13 fact, it has no authority whatsoever to act as a "holder" to assign the 1st NOTE and the 1st DOT
 14 to the Morgan Stanley Trust, therefore the assignment is void ab initio, and Deutsche is not the
 15 beneficiary of record entitled to initiate foreclosure proceedings, by itself or through its "agent
 16 for beneficiary" — ReconTrust.

17 **48. THE ASSIGNMENT OF DEED OF TRUST RECORDED ON 6/28/11**
 18 **CANNOT ASSIGN ANY INTEREST TO THE MORGAN STANLEY TRUST, ON**
 19 **BEHALF OF THE ORIGINAL LENDER ACCREDITED, BECAUSE ACCREDITED IS**
 20 **LIQUIDATED AND THE PERMISSION OF THE BANKRUPTCY TRUSTEE AND**
 21 **COURT IS REQUIRED FOR MERS TO ACT. SAID PERMISSION WAS NOT**
 22 **OBTAINED, THEREFORE THE 1ST DOT AND 1ST NOTE CANNOT BE ASSIGNED T**
 23 **OTHE PURPORTED BENEFICIARY, THE MORGAN STANLEY TRUST, AND THE**
 24 **ASSIGNMENT IS VOID AB INITIO.**

1 Because the Assignment of the Deed of Trust is void ab initio, the Notice of Default is
 2 also void ab initio, thus current status of the 1st Deed of Trust is that stated on the original 1st
 3 Deed of Trust recorded on 9/18/06, specifically that the Trustee is still Alliance Title and the
 4 beneficiary is still Accredited Home Loans. The 1st Deed of TRUST state only that MERS is the
 5 beneficiary and the nominee of the Lender. Therefore, only the beneficiary Accredited or its
 6 agent can initiate a foreclosure, and Accredited, a bankrupt, cannot do so, without the permission
 7 to the Bankruptcy Trustee and the Bankruptcy Court. If the 1st Note is not part of the Morgan
 8 Stanley Trust as of 6/28/11 and if MERS is in fact, the “holder” then it must be acting as the
 9 “nominee” or “beneficiary” of Accredited. In fact, the seller Accredited is now liquidated as set
 10 forth in paragraph 4 Incorporated by reference. Therefore, in order for MERS to execute any
 11 assignment “as nominee for the “Seller”, i.e. Accredited, MERS would need the permission of
 12 the trustee for Accredited’s bankruptcy to obtain authority to executed said assignment. The
 13 plaintiff has had the bankruptcy docket reviewed regarding Accreditors bankruptcy and there is
 14 no indication that the trustee has approved this assignment. The plaintiff is informed and believes
 15 and thereon alleges that such authority is unlikely to be given in most situations. Perhaps most
 16 compellingly, where the original and true note holder Accredited has gone bankrupt and is now
 17 in liquidation, the trustee or receiver is unlikely to permit an assignment to another entity.

18 For the foregoing reasons, the assignment is null and void ab initio and Deutsche is not
 19 the beneficiary of record entitled to initiate foreclosure proceedings, by itself or through its
 20 “agent for beneficiary” — Recontrust.

21 **49. THE ASSIGNMENT OF DEED OF TRUST RECORDED ON 6/28/11 IS**
 22 **VOID BECAUSE THERE IS A FACTUAL BASIS TO SUSPECT THAT THE 1ST NOTE**
 23 **WAS NOT, IN FACT, TRANSFERRED BY ACCREDITED INTO THE MORGAN**
 24 **STANLEY TRUST. THEREFORE THERE CAN BE NO ASSIGNMENT BY SAID**
 25 **INSTRUMENT OF THE 1ST DOT AND 1ST NOTE TO THE PURPORTED**

1 **BENEFICIARY, THE MORGAN STANLEY TRUST, THUS THE ASSIGNMENT IS**
 2 **VOID AB INITIO.**

3 The plaintiff is informed and believes and thereon alleges, that there is a factual basis to
 4 suspect, based upon the face of the Assignment of Deed of Trust and the PSA that the 1st Note
 5 was not, in fact, transferred by Accredited into the Morgan Stanley Trust, the purported
 6 beneficiary, at all because if it were, Deutsche as Trustee for the Morgan Stanley Trust would be
 7 the “holder” of the 1st Note — not MERS which signed the Assignment of the Deed of Trust as
 8 the “holder” of the Deed of Trust AND “together with the “note”. If MERS is still the “holder”, it
 9 did not transfer the Note into the Morgan Stanley Trust and the trust is not the beneficiary. If
 10 MERS is still the “holder”, the Seller did not transfer the Deed of Trust to the Custodian
 11 Deutsche by designating MERS as the mortgagee of record, as the “mortgagee of record, as
 12 nominee for the Seller” on the MERS System, pursuant to the PSA’s definition of a “MERS
 13 Designated Mortgage Loan”. Therefore, pursuant to the terms of the PSA, Morgan Stanley Trust
 14 did not become the “holder” of the Note and Deed of Trust as of the Closing Date April 3, 2007
 15 and it now has, in fact, no authority whatsoever as a “beneficiary” to initiate foreclosure
 16 proceedings through its agent Recontrust. New York trust law provides that if the trust is
 17 expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act
 18 of the trustee in contravention of the trust, except as authorized . . . is void. Because the
 19 governing document in these securitizations -- the PSA -- both creates the securitization trust and
 20 purports to sell the loans into the trust, the conditions of such sale set forth in the PSA must be
 21 carefully adhered to and not be subject to any variance or exception outside the four corners of
 22 the contract. If those terms and conditions are not properly followed, the sale may be void. In
 23 such an event, the securitization would not own the loan it supposedly owns as a result of the
 24 securitization transaction.

1 For the foregoing reasons, the assignment is null and void ab initio and Deutsche is not
 2 the beneficiary of record entitled to initiate foreclosure proceedings, by itself or through its
 3 "agent for beneficiary" — Recontrust.

4 **50. THE ASSIGNMENT OF DEED OF TRUST RECORDED ON 6/28/11 DOES**
 5 **NOT MEET THE REQUIREMENTS OF THE CALIFORNIA AND NEW YORK STATE**
 6 **UNIFORM COMMERCIAL CODES IN REGARDING TO MERS BEING A**
 7 **PURPORTED "HOLDER" OF THE 1ST NOTE. THEREFORE SAID ASSIGNMENT OF**
 8 **DEED OF TRUST DOES NOT ASSIGN THE 1ST DOT AND 1ST NOTE TO THE**
 9 **PURPORTED BENEFICIARY, THE MORGAN STANLEY TRUST. THUS THE**
 10 **ASSIGNMENT IS VOID AB INITIO.**

11 MERS cannot be a "holder" as of the date of the Assignment of the Deed of Trust
 12 executed by MER's agent on 6/28/11, under California Commercial Code §1201, if the 1st Note
 13 was transferred to the Morgan Stanley Trust at the Closing Date of April 3, 2007, because §1201
 14 defines a "holder" as a person in possession of the Note payable to a bearer or to itself. CC
 15 Section 1201 states: "Holder" means: (A) the person in possession of a negotiable instrument
 16 that is payable either to bearer or, to an identified person that is the person in possession; or (B)
 17 the person possession of a document of title if the goods are deliverable either to bearer or to the
 18 order of the person in possession.

19 **51. RECONTRUST AS "AGENT FOR THE BENEFICIARY" MORGAN**
 20 **STANLEY TRUST HAS NO AUTHORITY TO ACT ON BEHALF OF MORGAN**
 21 **STANLEY IF THE ASSGINEMENT BY MERS OF THE 1st NOTE AND 1st DOT TO**
 22 **THE MORGAN STANLEY TRUST IS VOID AB INITIO.**

23 The plaintiff alleges that because MERS had, in fact, no authority whatsoever as the
 24 "holder" to assign any beneficial interest to Deutsche in the Assignment of the Deed of Trust,
 25

1 Recontrust, which imitated the foreclosure proceeding as the "agent for the beneficiary"
 2 Deutsche by recording its Notice of Default and Election to Sell under Deed of Trust
 3 recorded on 9/21/11, as set forth herein and attached as, Exhibit H, had, in fact, no authority
 4 whatsoever to do so, because the beneficiary at the time the Notice of Default was recorded, was
 5 actually, in fact, g Deutsche, because the assignment of beneficial interest to Deutsche was void
 6 ab initio.

7 **52. THE SECOND CHANGE OF LOAN SERVICER — TO BANK OF
 8 AMERICA CORP.**

9 On or about September 2009, the plaintiff is informed and believes and thereon alleges
 10 that Countrywide and/or Bank of America Corp. through one of its subsidiaries, possibly BAC,
 11 represented to the plaintiff that she was to make monthly payments for the 1st Loan and 2nd Loan
 12 to Bank of America, and not to Countrywide, and she commenced to make timely and fully
 13 monthly payments to Bank of America Corp. The plaintiff is informed and believes and thereon
 14 alleges that Bank of America was the servicer of the plaintiffs two Loans, although neither
 15 Countrywide nor Bank of America Corp explained to her that Bank of America Corp did not
 16 have any beneficial interest in the loan and was not the lender. Therefore, the plaintiff believed
 17 that Bank of America Corp had become the lender in the place of Accredited. Plaintiff is
 18 informed and believes and thereon alleges that Bank of America Corp became the successor
 19 servicer under the PSA to the former servicer Countrywide, when Bank of America Corp
 20 purchases Countrywide as set forth herein.

21 **53. FAILURE TO MAKE TIMELY PAYMENTS.**

22 On or about January 2009, the plaintiff failed to make timely full payments on the 1st
 23 Loan and 2nd Loan because the interest rates were exorbitant and it was impossible for her to do
 24 so.
 25

1 **54. BANK OF AMERICA CORP'S REPRESENTATIONS REGARDING**
 2 **THREE MODIFICATIONS OF THE 1st LOAN.**

3 The plaintiff alleges that Bank of America Corp. agreed to modify her 1st loan and
 4 postpone any foreclosure until the modification occurred on three occasions.

5 A. First Attempted Modification. In 2009 Bank of America Corp. represented to the
 6 plaintiff that she could try to modify the 1st Loan through Bank of America Corp.'s home loan
 7 retention program. The plaintiff submitted all documentation that Bank of America Corp.
 8 required to obtain the modification on or about September 2009 and the plaintiff paid pursuant to
 9 the modification on or about October 9, 2009 and on November 9, 2009, the sums of \$2,217.43.
 10 The plaintiff signed and notarized the loan modification agreement with Bank of America Corp.
 11 and sent proof of her income by 3 months of bank statements to Bank of America., which it had
 12 requested. Later, Bank of America denied having received the plaintiff's proof of income and
 13 cancelled the modification.

14 B. Second Attempted Modification. On or January 2010, Bank of America Corp.
 15 again agreed in writing to modify the first loan under its Bank of America home loan retention
 16 program. The plaintiff paid pursuant to this modification on or about February 4, 2010 the sum
 17 of \$2,669.17 and on or about March 4, 2010, the sum of \$2074.14. Thereafter, Bank of America
 18 Corp. cancelled the modification without giving any reason. As part of their negotiations of a
 19 workout agreement regarding the Loan, Bank of America had requested the aforesaid monthly
 20 payments as a demonstration of good faith and as part of a so-called "trial modification" Plaintiff
 21 agreed to make such payments and made them with the understanding that Bank of America
 22 Corp. would not conduct] a trustee sale of the Subject Property while the negotiations were under
 23 way and would offer her work-out agreement of the Loan that would allow her to retain the
 24 Subject Property under more reasonable terms in light of its significantly reduced fair market
 25 value in order to finalize the modification. The plaintiff made the aforesaid payments on time

1 pursuant to the modification, yet Bank of America cancelled the first two modifications. The
 2 plaintiff made numerous inquiries to Bank of America which did not respond to her inquiries.

3 C. Third Attempted Modification. On or about April 2010, the Bank of America
 4 Corp. again agreed to modify the 1st loan and postpone any attempted foreclosure, and the
 5 plaintiff supplied additional information to the a Bank of America Corp executive which he
 6 requested in order to modify the loan. The plaintiff believed the loan was undergoing
 7 modification up until the date she received the Notice of Default from Recontrust.

8 D. Failure to Modify the 1st Loan on three occasions. Therefore, Bank of America
 9 Corp. represented to the plaintiff three times that it would modify the 1st Loan by utilizing its
 10 home loan retention program and that it would postpone any foreclosure while it so modified the
 11 loan, and it failed to so modify and instead initiated foreclosure proceedings.

12 E. **DEFENDANT BANK OF AMERICA CORP'S LACK OF AUTHORITY**
 13 **TO ENGAGE IN MODIFICATION.**

14 The plaintiff is informed and believes and thereon alleges that Bank of America Corp.'s
 15 Home Loan Retention Program is utilized for loans originated by Bank of America exclusively.
 16 The plaintiff is informed and believes and thereon alleges that the Morgan Stanley Trust did not
 17 and does not participate in the Bank of America Home Loan Retention Program. In addition,
 18 according to the PSA, the servicer Bank of America had the sole duty to "maximize interest
 19 payments and profits". Therefore it could not modify the 1st loan consistent with the terms of the
 20 PSA because it would be unprofitable to the Morgan Stanley Trust to do so. Therefore, the
 21 plaintiff alleges that Bank of America Corp. had zero authority to modify the 1st loan under Bank
 22 of America's home loan retention program and/or in accordance with the PSA, yet it engaged in
 23 three modifications and represented to the plaintiff that it was modifying the loan on three
 24 occasions, and then apparently cancelled the modifications because it had no authority to modify,

1 thus deceiving her. At the time, the plaintiff believed Bank of America's representations that it
 2 was engaged in said three modifications in good faith.

3 F. The Plaintiff's reliance on modification to her detriment. Plaintiff forwent seeking
 4 other remedies in reliance on the Defendants' promises. If Bank of America Corp. had not
 5 falsely purported to engage in a loan modification process, Plaintiff would have focused her time
 6 on seeking alternatives to foreclosure other than loan modification, such as bankruptcy
 7 proceedings.

8 55. **THE NOTICE OF DEFAULT.** Nevertheless, despite the fact that the plaintiff
 9 believed Bank of America Corp. was still engaged in modifying her 1st loan, unbeknownst to
 10 Plaintiff, on September 21, 2011, ReconTrust Company as "agent for the beneficiary" recorded a
 11 Notice of Default and Election to Sell Under Deed of Trust pertaining to the 1st loan, in Alameda
 12 County Recorder's office, Doc. No. 2011268436, (hereinafter "NOD") attached hereto as Exhibit
 13 H and incorporated herein by reference. Said NOD states:

14 NOTICE IS HEREY GIVEN THAT: RECONTRUST COMPANY, N.A. is acting as an
 15 agent for the Beneficiary under a Deed of Trust dated 9/ 1/06 executed by Rahila Kahn, a
 16 married woman as her sole and separate property as Trustor, to secure certain obligation
 17 in favor of MERS as beneficiary recorded 9/18/06 as Instrument No. 2006351807."

18 Said Notice of Default also states:

19 To find out the amount you must pay or to arrange for payment to stop the foreclosure, or
 20 if your property is in foreclosure for any other reason, contact: Deutsche Bank National
 21 Trust Company, as trustee for the holders of the Morgan Stanley Home Equity Loan
 22 Trust 2007-2, Mortgage Pass Through Certificates, Series 2007-2 C/O Bank of America,
 23 N.A. 400 National Way, Simi Valley, CA 93065, Foreclosure Department (800) 669-
 24 6650.

25 Therefore, Recontrust, who recorded the Notice of Default recorded on 9/21/11, has
 26 stated in the Notice of Default that MERS is the beneficiary in the Notice of Default. In
 27 contradiction, MERS itself states in the "Assignment of Deed of Trust recorded on 6/28/11 that it

1 has transferred under the Deed of Trust to Deutsche Bank National Trust Company, as trustee for
 2 the holders all beneficial interest of the Morgan Stanley Home Equity Loan Trust 2007-2,
 3 Mortgage Pass Through Certificates, Series 2007-2.

4 In addition, in its Debt Validation Notice, which Recontrust sent to the plaintiff on or
 5 about October 1, 2011, Recontrust states herein, "The name of the Creditor to whom the debt is
 6 owed:

7 **"Bank of America, N.A."**

8 **56. THE 2923.5 DECLARATION.** Attached to said Notice of Default (Exhibit H) is
 9 a "California Declaration" by Chamkiri Miller, Mortgage Servicing Specialist II of Bank of
 10 America, N.A. Ms. Miller and declared that the requirements of Section 2923.5 of the California
 11 Civil Code had been met, by specifically stating that she "tried with due diligence to contact the
 12 borrower in accordance with California Civil Code Section 2923.5." Her "Declaration" signed
 13 9/13/11 was not under penalty of perjury. In fact the plaintiff never was contacted by Chamkiri
 14 Miller even though she was available via telephone, mail and email. Moreover, the declaration is
 15 void because it fails to comply with CC §2923.5. A true and correct copy of the Notice of
 16 Default with the Default Declaration attached is attached hereto as Exhibit K and is incorporated
 17 herein by reference.

18 In fact, Ms. Miller did not initiate any attempt to try to contact the plaintiff regarding
 19 foreclosure options, in order to "assess the borrower's financial situation and explore options for
 20 the borrower to avoid foreclosure." The plaintiff never heard from her.

21 **57. NO SUBSTITUTION OF TRUSTEE WAS EVER FILED REGARDING
 22 THE 1st DOT.**

23 The plaintiff has had the Alameda County Recorders index searched and has determined
 24 as of the date of the filing of this complaint no Substitution of Trustee was ever filed by anyone
 25 regarding the 1st Dot.

1 **58. DECLARATORY RELIEF IS SOUGHT REGARDING THE LACK OF**
 2 **ANY RECORDATION OF A SUBSTITUTION OF TRUSTEE AND THE**
 3 **REQUIREMENT THAT ANY FUTURE NOTICE OF SALE BE RECORDED ONLY**
 4 **LFTQ RECORDING A VALID SBSITUTION OF TRUSTEE.**

5 The Notice of Default was executed by Recontrust as the “agent for the beneficiary”,
 6 Deutsche as Trustee for the Morgan Stanley Trust. ReconTrust was not the trustee named in the
 7 deed of trust — Alliance Title was. No substitution of trustee was ever recorded regarding the 1st
 8 DOT, as set forth herein and incorporated by reference.) Although the plaintiff contends that the
 9 Assignment of Deed of Trust to the “beneficiary was void ab initio as set forth herein, even if the
 10 assignment is found to be legal, and although the agent of a beneficiary can institute non-
 11 foreclosure proceedings pursuant to California Civil Code § 2924(b)(4), the 1st DOT, states
 12 herein, the requirement that a Trustee, not a beneficiary, must file the Notice of Sale and conduct
 13 any sale.

14 **Paragraph 22 Acceleration;** Remedies states in relevant part:

15 If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a
 16 written notice of the occurrence of an event of default an of Lender’s election to cause the
 17 Property to be sold. Trustee shall cause this notice to be recorded in each county in which
 18 any part of the Property is sold. . . . Trustee shall give public notice of sale to the person
 19 and in the manner prescribed by Applicable law. After the time required by Applicable
 20 law, Trustee, without demand on Borrow shall sell the Property at public auction to the
 21 highest bidder at the time and place and under the terms designated in the notice of sale
 22 in one or more parcels and in any order Trustee determines. . . Trustee shall deliver to
 23 the purchase Trustee’s deed conveying the property without any covenant or warranty,
 24 express or implied. Therefore according to the 1st DOT, although the Lender or its agent
 25 can record a Notice of Default, only the Trustee can give “public notice of sale” and “sell
 the property at public auction”

22 Thus, the 1st DOT does not allow the Lender or its agent to record the Notice of Sale and
 23 conduct the sale — only a Trustee can do so. Paragraph 24 of the 1st DOT governs the manner of
 24 Substitution of Trustee:

1 Substitute Trustee. Lender, at its option, may from time to time appoint a successor
 2 trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by the
 3 Lender and recorded in the office of the Recorder of the county in which the Property is
 4 located. The instrument shall contain the name of the original Lender, Trustee, and Borrower, the
 5 book and page where this Security Instrument is recorded in the name and address of the
 6 successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all
 7 the title, powers and duties conferred upon the Trustee herein and by Applicable Las. This
 8 procedure for substitution of trustee shall govern to the exclusion of all other provisions for
 9 substitution must recorded prior to the actual sale. Pursuant to Civil Code section 2934a (c) a
 10 substitution of trustee can be recorded after the notice of default is recorded, however, if that
 11 occurs, a "new notice of sale" must be given pursuant to 2934a (e), to wit:

12 (e) Notwithstanding any provision of this section or any provision
 13 in any deed of trust, unless a new notice of sale containing the
 14 name, street address, and telephone number of the substituted trustee
 15 is given pursuant to Section 2924f, any sale conducted by the
 16 substituted trustee shall be void.

17 Therefore, the plaintiff seeks declaratory relief — a declaration that the purported
 18 beneficiary the Morgan Stanley Trust or Deutsche as Trustee for the Morgan Stanley Trust and
 19 its agents Bank of America Corp. and Recontrust and any other agents have no right to record a
 20 give any Notice of Sale and/or conduct any foreclosure proceeding without first filing a valid
 21 Substitution of Trustee and then giving a Q Notice of Sale.

22 **59. THE PATENT REPRESENTATIONS ON THE FACE OF THE LOAN**
 23 **DOCUMENTS AND OTHER FACTS SHOW THAT THE 1ST PROMISSORY NOTE**
 24 **WAS NOT TRANSFERRED TO THE TRUST, PURSUANT TO THE PSA AND NEW**
 25 **YORK LAW THEREFORE THERE IS NO RIGHT TO FORECLOSE.**

26 Without a lawful transfer of the 1st Note to the Morgan Stanley Trust, pursuant to New
 27 York Law and the PSA, the Morgan Stanley Trust, which did not possess the 1st Note at the time

1 of the Closing Date plus ninety days thereafter, cannot foreclose on the Subject Property. The
 2 plaintiff alleges that the 1st Note may not have been duly endorsed, transferred and delivered to
 3 the Morgan Stanley Trust as required by the PSA. Plaintiff further alleges that in order for the
 4 Morgan Stanley Trust to have had a valid and enforceable security interest against the Subject
 5 Property, the Morgan Stanley Trust must prove that it received an endorsement of the Note prior
 6 to the Closing Date of the Morgan Stanley Trust and that it had physical possession of the Note
 7 at the time of the foreclosure. Absent such proof that the 1st Note was lawfully and timely
 8 transferred to the trust, Plaintiff alleges that the Morgan Stanley Trust and its agents Bank
 9 America Corp. and ReconTrust have no authority whatsoever to foreclose on the Subject
 10 Property.

11 **60. THE PATENT REPRESENTATIONS ON THE FACE OF THE DOCUMENTS**
 12 **AND OTHER FACTS SHOW THE 1st DEED OF TRUST WAS NOT ASSIGNED TO**
 13 **THE MORGAN STANLEY TRUST, PURSUANT TO THE PSA AND NEW YORK LAW.**
 14 **THEREFORE THERE IS NO RIGHT TO FORECLOSE.**

16 Without a lawful assignment of the 1st Deed of Trust to the Morgan Stanley Trust,
 17 pursuant to New York Law and the PSA, the Morgan Stanley Trust, which did not possess the 1st
 18 DOT, as of the Closing Date plus ninety days thereafter, cannot foreclose on the Subject
 19 Property. The plaintiff alleges that the 1st DOT may not have been duly transferred to the
 20 Morgan Stanley Trust as required by the PSA. Absent such proof that the 1st Note was lawfully
 21 and timely transferred to the trust, Plaintiff alleges that the Morgan Stanley Trust and its agents
 22 Bank America Corp. and ReconTrust have no authority whatsoever to foreclose on the Subject
 23 Property.
 24

25 **FIRST CAUSE OF ACTION FOR FRAUD AGAINST BANK OF AMERICA N.A.**

1 61. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
2 through 60, inclusive, as though fully set forth herein.
3

4 62. On or about September 2006, Plaintiff engaged the services of Golden State and
5 the entities to which it "converted out" (hereinafter "DOES 6 through 10") by engaging the
6 services of a male mortgage broker Thomas, whose last name the plaintiff cannot now recall
7 (hereinafter DOE 1) and a female employee of Golden State named Mary, whose last name the
8 plaintiff cannot now recall (hereinafter DOE 2) and a male supervisor whose name the plaintiff
9 cannot now recall (hereinafter DOE 3) and possibly engaged the services of other persons
10 employed by Golden State and Does 6 through 10, whose identities the plaintiff does not recall
11 or know at this time, (hereinafter DOES 4 through 5). Mary, DOE 2, acted at all times material
12 to this Complaint, in the role of an assistant to DOE 1 AND DOE 3. DOES 1 through 5 held
13 themselves out to be agents and employees of Golden State and plaintiff is informed and believes
14 and thereon alleges that they worked for Golden State. Plaintiff employed the services of said
15 defendants Golden State DOES 1 through 10 to procure a loan for her to purchase the Subject
16 Property. The plaintiff's primary language is Urdu. The plaintiff at the time she procured said 1st
17 Loan and 2nd Loan had limited English language ability regarding reading, and could not read
18 and understand the terms used in reference to loans and financing. The plaintiff could
19 not read the and understand the terms in English regarding said 1st Loan and 2nd Loan as set
20 forth in the stack of loan documents which Does 1 through 3 told her to sign in order to procure
21 said loans. The plaintiff told Does 1 through 3 that her primary language was Urdu and that she
22 could not read said loan documents, but they failed to provide for her any translation whatsoever.
23 Instead, Doe 3 made representations about the 1st Loan and 2nd Loan to the plaintiff as set forth
24 in paragraphs 28 through 36, incorporated by reference and told her that said loan documents
25

1 stated what he represented to her as set forth in said paragraphs. The plaintiff believed Doe 3 and
 2 relied upon him completely.
 3

4 63. On the day the plaintiff signed the loan documents at Golden State's office in
 5 Fremont, California, the plaintiff could not read the loan documents which contained
 6 sophisticated and complex loan and finance terms because of her limited English language
 7 reading ability and needed to have all of the loan documents translated into Urdu for her so she
 8 could understand them. However, DOE 3, speaking English, represented to the plaintiff what
 9 was in the loan documents and she believed what he said to her because of his apparent
 10 professional expertise.

11 64. On the day the plaintiff signed the loan documents at Golden State's office in
 12 Fremont, DOES 1 through 3 did not translate into Urdu any of what Doe 3 represented to the
 13 plaintiff in his oral statements regarding the two loans, nor did they translate into Urdu any of the
 14 documents regarding the 1st Loan and 2nd Loan which she signed..

15 65. Accordingly, as a result of Bank of America's fraudulent conduct, Plaintiff has
 16 suffered, and will continue to suffer, compensatory, general and special damages in an amount to
 17 proof. Additionally, Bank of America acted with malice, fraud and/or oppression and, thus,
 18 Plaintiffs is entitled to an award of punitive damages.

19 **SECOND CAUSE OF ACTION FOR VIOLATIONS OF TRUTH IN LENDING ACT**
 20 **AGAINST BANK OF AMERICA N.A.**

21 66. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
 22 through 64, inclusive, as though fully set forth herein. The claims are against Defendants BANK
 23 OF AMERICA N.A. and RECONTRUST COMPANY.

24 67. Because the transaction was secured by Plaintiffs home, and was not entered into
 25 for the purposes of the initial acquisition or construction of that home, it is subject to the right to

cancel provided by TILA, 15 U.S.C. § 1601, and implementing Federal Reserve Board
 Regulation Z, 12 C.F.R § 226.23, which provides:

(a) Consumers right to rescind

- (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumers principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section. [fn]47.
- (2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditors' designated place of business.
- (3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, [fn] 48, whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act. [15 U.S.C. § 1635(f)].
- (4) When more than one consumer in a transaction has the right to rescind the exercise of the right by one consumer shall be effective as to all consumers.

(b) Notice of right to rescind

In a transaction subject to rescission, a creditor shall deliver 2 copies of the notice of right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

- (1) The retention or acquisition of a security interest in the consumers' principal dwelling.
- (2) The consumers' right to rescind the transaction;
- (3) How to exercise the right to rescind, with a form for that purpose, designating the

1 address of the creditors place of business;

2 (4) The effects of rescission, as described in paragraph (d) of this section;

3 (5) The date the rescission period expires;

4 (f) Exempt transactions.

5 The right to rescind does not apply to the following:

6 (1) A residential mortgage transaction defined in U.S.C. 15 §1602(w) as one where a
7 "security interest is created or retained against the consumers dwelling to finance
the acquisition or initial construction of such dwelling].

8 (2) A credit plan in which a state agency is a creditor.

9 36. Because Defendants Bank of America, N.A. and Recontrust Company failed to
10 comply with Section 226.23, Plaintiffs has a continuing right to rescind.

11 37. Plaintiffs have given notice of their election to rescind.

12 **ADDITIONAL RELIEF:**

13 In any transaction in which it is determined that the creditor has violated this section, in
14 addition to rescission, the Court may award relief under section 1640 of this title for violations of
15 this sub-chapter not relating to the right to rescind.

16 WHEREFORE, Plaintiff's requests that the Court enter judgment in favor of Plaintiffs
17 and against Bank of America, N.A. and Recontrust Company for:

- 18 1. Rescission of the Golden State Funding loan;
19 2. Statutory damages for the disclosure violations;
20 3. Attorneys fees, litigation expenses and costs.
21 4. Such other relief as the Court may deem just and proper.

22 **THIRD CAUSE OF ACTION FOR VIOLATIONS IN REAL SETTLEMENT**

23 **PROCEDURES ACT AGAINST BANK OF AMERICA N.A.**

24 PLAINTIFFS COMPLAINT FOR (1) FRAUD; (2) VIOLATIONS OF TRUTH IN
25 LENDING ACT; (3) VIOLATIONS IN REAL ESTATE SETTLEMENT PROCEDURES ACT; (4) VIOLATIONS
OF CALIFORNIA CIVIL CODE SECTIONS 2923.5 and 2924

1 68. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
 2 through 67, inclusive, as though fully set forth herein. The claims are against Defendants BANK
 3 OF AMERICA N.A. and RECONTRUST COMPANY.

4 69. By engaging in the practices set forth above, Defendants BANK OF AMERICA
 5 N.A. and RECONTRUST COMPANY gave to, and/or accepted a fee, kickback, or thing of
 6 value pursuant to an agreement or understanding that business incident to or a part of a real
 7 estate settlement service involving federally related mortgage loans would be referred to a person
 8 in violation of the Real Estate Settlement Procedures Act of 1974, 12 11 U.S.C. § 2607(a).

9 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as
 10 hereinafter set forth.

11 **FOURTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA CIVIL CODE**

12 **SECTION 2923.5 AND 2924 AGAINST BANK OF AMERICA N.A.**

13 70. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
 14 through 39, inclusive, as though fully set forth herein

16 71. Defendants BANK OF AMERICA caused to record a materially defective Notice
 17 of Default and Election to sell under the Deed of Trust on _____, 20_____,
 18 Document No. ____ - _____.

19 72. As Trustee or agent of the beneficiary BANK OF AMERICA, breached the duty
 20 to follow California Statutes § 2923.5 and § 2924 causing a direct and proximate cause of
 21 damages to Plaintiff and voids the Notice of Default.

22 **VIOLATION OF CC§2923.5 A REQUIREMENT PRIOR TO FILING A NOD**

23 **CC§2924**

1 73. The Defendants BANK OF AMERICA N.A. and RECONTRUST COMPANY,
 2 unfair, unlawful, and fraudulent business practices including, but not limited to the patently false
 3 and misleading declaration by BANK OF AMERICA N.A. and the errors in filing the NOD on
 4 _____, 20____ in violation to § 2923.5 and § 2924.

5 74. BANK OF AMERICA knowingly attached such declaration, (negligently, and
 6 when confronted chose to ignore this fact demonstrating malice), to the faulty Notice of Default
 7 filed _____ and in violation of statutes § 2923.5 and § 2924.

8 75. BANK OF AMERICA N.A. and RECONTRUST COMPANY knew that this was
 9 not to be sent, both knew it was not accurate, both knew it was done contrary to Cal. Civ. Code §
 10 2923.5. The legislature enacted this statute to slow the foreclose process and protect
 11 homeowners.

12 76. In a rush to mass produce Declaration Notices, to put people out of their
 13 homes BANK OF AMERICA N.A. and RECONTRUST COMPANY harmed Plaintiff and
 14 harmed many other who just gave up.

16 77. Both made more money by rapidly pushing people out of their homes this done
 17 aggressively with negligence and when confronted chose to ignore and push harder to eject
 18 Plaintiff and other homeowners. This is negligence with malice. They lost money if
 19 modifications were done.

20 This was presented to Congress as an interim report:

21 *"Current extremely high levels of defaults and foreclosures among residential
 22 mortgages represents the interim report to Congress by the Secretary of the Department of
 23 Housing and Urban Development (HUD) pursuant to Section 1517 of the Housing and
 24 Economic Recovery Act (HERA) of 2008 (P.L. 110-289)".*